

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002488-MR

DONNIE JOE WOOLDRIDGE

APPELLANT

v.

APPEAL FROM McLEAN CIRCUIT COURT
HONORABLE DAVID H. JERNIGAN, JUDGE
ACTION NO. 00-CR-00027

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: GUIDUGLI, TACKETT, AND VANMETER, JUDGES.

GUIDUGLI, JUDGE: Donnie Wooldridge (hereinafter "Wooldridge") appeals from the McLean Circuit Court's order denying his RCr 11.42 motion. We affirm.

Following a trial by jury on October 4, 2000, Wooldridge was found guilty of first-degree sexual abuse and sentenced to five (5) years in prison.¹ Wooldridge's direct appeal to this Court was affirmed by this Court in not-to-be-published opinion rendered March 8, 2002. (Case No. 2001-CA-

¹ The jury also found Wooldridge guilty of being a persistent felony offender in the first degree and enhanced his sentence to twelve (12) years. However, the circuit court subsequently set aside that conviction based upon insufficiency of the evidence.

000352-MR). Thereafter, on August 20, 2003, Wooldridge filed his RCr 11.42 motion. In his motion he alleged four instances that he believed clearly showed his trial attorney to be ineffective: (1) trial attorney's failure to perform adequate trial investigation; (2) attorney's failure to adequately move for a directed verdict at the close of the Commonwealth's case in chief and at the PFO state; (3) failure to request a taint hearing; and (4) failure to obtain the victim's school, medical and social services records. On October 24, 2003, the McLean Circuit Court entered an order denying Wooldridge's RCr 11.42 motion. This appeal followed.

In order to prevail on a claim of ineffective assistance of counsel, a movant must show both that counsel's performance was deficient and that the deficiency resulted in actual prejudice affecting the outcome of the proceeding. See Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Also, see Gall v. Commonwealth, Ky., 702 S.W.2d 37 (1985). The burden is on the movant to overcome a strong presumption that counsel's assistance was constitutionally sufficient or that under the circumstances counsel's actions might be considered "trial strategy." Strickland, 466 U.S. at 689. "The critical issue is not whether counsel made errors but whether counsel was so thoroughly ineffective that defeat was snatched from the hands of probable

victory." Haight v. Commonwealth, Ky., 41 S.W.3d 436, 441 (2001). A court must be highly deferential in reviewing defense counsel's performance and should avoid second-guessing counsel's actions based on hindsight. Harper v. Commonwealth, Ky., 978 S.W.2d 311, 315 (1998).

In assessing counsel's performance the standard is whether the alleged acts or omissions were outside the wide range of prevailing professional norms based on an objective standard of reasonableness. Strickland, 466 U.S. at 668-69, n.6. To establish actual prejudice, a movant must show a reasonable probability that the outcome of the proceeding would have been different absent counsel's error. Id. at 694. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the proceeding considering the totality of the evidence before the jury. Id. at 694-95. The purpose of RCr 11.42 is to provide a forum for known grievances, not to provide an opportunity to research for grievances. Gilliam v. Commonwealth, Ky., 652 S.W.2d 856, 858 (1983).

On appeal, Wooldridge alleges that the circuit court erred in denying him an evidentiary hearing. He also argues the court erred in finding that Wooldridge's trial attorney's failure to request a "taint" hearing and failure to adequately investigate the victim's medical and social records was not

ineffective assistance of counsel. The circuit court's order denying the RCr 11.42 addressed these issues as follows:

First, the allegation that Wooldridge's trial attorney failed to perform an adequate investigation is not supported by the record. There is no evidence before the Court that would substantiate this claim. Wooldridge's motion fails to set forth any facts to support this assertion.

...

As for Wooldridge's next two allegations that his attorney failed to request a taint hearing and failed to do an adequate investigation of the child victim's school, medical and social services records, these contentions must fail because a taint hearing is not required under Kentucky law. Pendleton v. Commonwealth, Ky., 83 S.W.3rd 522 (2002). The record does not support any allegation that somehow Wooldridge's trial attorney was deficient in obtaining said records. There are no facts alleged which would suggest that such records contain information which would have altered the result in this case.

An evidentiary hearing is not necessary to consider issues already refuted by the record in the trial court. Sparks v. Commonwealth, Ky. App., 721 S.W.2d 726 (1987). Conclusionary allegations which are not supported with specific facts do not justify an evidentiary hearing. RCr 11.42 does not require a hearing to serve the function of discovery. Stanford v. Commonwealth, KY., 854 S.W.2d 742 (1993).

We agree with the McLean Circuit Court that Wooldridge has failed in his burden of establishing any facts on which RCr 11.42 relief could be based. Wooldridge contends that the

victim's testimony was tainted by an aunt who had been sexually abused as a child. However, at the November 13, 2000, final sentencing hearing, David Peak, an employee of the Cabinet for Families and Children, testified that he had interviewed the victim and found her to be "very honest." The following is a portion of the exchange between Mr. Peak and Wooldridge's attorney during that hearing:

Q You do understand that the child is suppose to tell the story not the adult tell the child the story, correct? Or intimate what the answer is to be?

A Well, in my business after 24 years, once Social Services gets involved, we're pretty much aware that there could be some situations, so in my interview with her, I take that into consideration. I can't really speak for what they did. All I can tell you is that, you know, I'm a trained professional, 24 years of experience, a master's degree in counseling and assessment. That the techniques that I used - we used a video - I mean we used a recorder. I asked the appropriate questions as a trained professional. I cannot really say what they did or didn't. I just know that the child in my questioning was - she appeared to be very honest.

Q Now, can a child be taught the story to tell?

A Sure.

Q You weren't aware of any situations that occurred or nobody brought to your attention the fact that there might be some circumstances that occurred

beforehand that could lead you to believe that the child had been told the story?

A In my interviewing of the child, I didn't - none of that pathology came out, because she was interviewed - we go back in and we ask her to recall the situation. A lot of times when children are lying, their story is - they get very, very confused. They try to draw from - they can't remember their lies. So she was interviewed and the collateral contacts that we had as far as with her brothers, it just was right down the - it was the same type of testimony, and so that would have alerted us more if we had of started seeing, well, that's not the story this one said, or that's not the story - but that wasn't this case. The pathology that was shown was very, very clear by all parties that were involved in his situation.

Q Were you aware of who the children had spoken to before they spoke to you?

A Yes. I was aware they had spoken to the brother, the grandmother, the aunt, and the mother.

Based upon the testimony and arguments presented during that hearing the circuit court found that trial counsel had provided effective assistance at trial. Wooldridge has not provided any additional evidence to refute the circuit court's ruling.² His conclusory statements that the victim's allegations were tainted are unsupported by any facts or statements and as such, form no

² We note that the record provided to this Court does not include the trial record. This obviously limits any review of the trial attorney's actions in preparing for and trying the underlying charges.

basis for RCr 11.42 relief. See Wedding v. Commonwealth, Ky., 468 S.W.2 273 (1971).

Similarly, his contention that trial counsel failed to adequately investigate the victim's medical and social records is based upon conclusory statements and unsupported by substantive facts. The case of Carter v. Commonwealth, Ky., 450 S.W.2d 257 (1970), cited by Wooldridge is not factually similar nor does it support his argument that he is entitled to an evidentiary hearing. In that Wooldridge's meager conclusory statements of ineffective assistance of counsel are refuted by the record no evidentiary hearing was required. Sparks v. Commonwealth, Ky.App., 721 S.W.2d 726 (1987).

For the foregoing reasons, the order of the McLean Circuit Court denying Wooldridge's RCr 11.42 relief is affirmed.

ALL CONCUR.

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