RENDERED: DECEMBER 29, 2005; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000080-MR

CHARLES O'DELL SHORES — APPELLANT

v.

APPEAL FROM WHITLEY CIRCUIT COURT
HONORABLE PAUL E. BRADEN, JUDGE
ACTION NO. 98-CR-00055

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING
** ** ** ** **

BEFORE: TAYLOR AND VANMETER, JUDGES; POTTER, SENIOR JUDGE.[1]

POTTER, SENIOR JUDGE: Charles O. Shores appeals from a summary denial of his RCr 11.42 motion. We affirm.

On April 14, 1998, Willis Knuckles was found dead lying on his bed with a gunshot wound to the head in his rural Whitley County home. Partially disabled, Knuckles traded and pawned guns so he normally had a large number of guns and considerable cash in his home. There was evidence that

[1] Senior Judge John Woods Potter sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

following the murder, cash and five guns were missing from the victim's home.

Shores was indicted and convicted of murder and robbery in the first degree and sentenced to fifty years' incarceration on the murder charge and ten years' on the robbery charge to be served consecutively. He appealed to the Kentucky Supreme Court alleging that: (1) the court erred when it failed to compel specific performance of a plea agreement; (2) that the court abused its discretion when it refused to permit the avowal testimony of a witness before the jury; (3) that it abused its discretion when it allowed evidence of a spent bullet found at the crime scene; and (4) when it denied his motion for a directed verdict on the charge of first-degree robbery. In an unpublished opinion rendered August 21, 2003, the Supreme Court affirmed.

Shores contends that because of articles published in the local newspaper regarding the murder and his arrest, he was entitled to a change of venue. He further alleges that the knowledge of two prospective jurors about the case tainted the entire jury. Shores did not raise either issue in his direct appeal. Issues that either were raised or should have been raised on direct appeal can not be raised in an RCr 11.42 motion. Baze v. Commonwealth, 23 S.W.3d 619, 626 (Ky. 2000). A claim of juror knowledge or bias must be raised on direct appeal

and not via an RCr 11.42 motion. Cole v. Commonwealth, 441 S.W.2d 160 (Ky. 1969).

The question of whether counsel failed to provide effective assistance because he did not move for a change of venue or conduct a more extensive voir dire is resolved under the standards set forth in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Shores must demonstrate that counsel's deficient performance fell below the objective standard of reasonableness and was so prejudicial that he did not receive a fair trial and a reasonable result. Strickland, 466 U.S. at 694. Thus, to succeed, it is necessary for Shores to state, with specificity, facts that demonstrate that a reasonably competent attorney would have moved for a change of venue and conducted a more extensive voir dire and that, as a result of counsel's failure to do either, he did not receive a fair trial. We agree with the trial court that both conclusions are refuted by the record and no evidentiary hearing was required. Sanders v. Commonwealth, 89 S.W.3d 380, 385 (Ky. 2002).

A change of venue is proper only when, because of pretrial publicity, it is relatively impossible to impanel a jury that has not preconceived an opinion as to the defendant's guilt. Elswick v. Commonwealth, 574 S.W.2d 916 (Ky.App. 1979). Although there was press coverage after Shores' trial commenced,

only one article was written prior to the jury selection process and reported that Shores' attempt to enter a guilty plea to second degree manslaughter was rejected by the court after the victim's family objected. The remaining articles were written either during or after the trial. Certainly, this is not pre-trial publicity that "utterly corrupted" the trial process. See Gall v. Commonwealth, 607 S.W.2d 97, 102 (Ky. 1980), overruled on other grounds, Payne v. Commonwealth, 623 S.W.2d 867 (Ky. 1981), cert denied, 450 U.S. 989, 101 S.Ct. 1529, 67 L.Ed.2d 824 (1981). When questioned regarding any prior knowledge of the case only two of the 31 veniremen had heard of the crime charged and only one of the two gained the knowledge from the press coverage. The other knew of Shores because he knew Shores' brother. The allegation that there was such community prejudice so that an impartial jury could not be selected is refuted by the record. Since there was no basis on which trial counsel could have successfully moved for a change of venue and no possibility that being tried in Whitley County prejudiced Shores' case, summary disposition of this issue was proper.

Finally, although the two jurors who indicated some prior knowledge of the case were not selected to hear the case, Shores speculates that one or both of them talked to the remaining veniremen, including those selected, and prejudiced them against him. There is no indication that the veniremen had

the opportunity to or did discuss the case. Shores' vague speculation will not support an RCr 11.42 motion. RCr 11.42 (2).

The judgment is affirmed.

ALL CONCUR.

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