

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000229-MR

DAVID LEE BLAIR

APPELLANT

v. APPEAL FROM BOYD CIRCUIT COURT
HONORABLE C. DAVID HAGERMAN, JUDGE
INDICTMENT NO. 01-CR-00194

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: HENRY AND SCHRODER, JUDGES; EMBERTON,¹ SENIOR JUDGE.

HENRY, JUDGE: In 2001, shortly after a physician confirmed that David Blair's twelve year old stepdaughter was three months' pregnant, Blair was indicted for her rape (eleven counts) and the sexual abuse of her eight year old sister. Following a jury trial in 2002, Blair was convicted on all counts as well as the status offense of persistent felony offender. Blair's sentence was affixed at 70 years' imprisonment. The convictions were affirmed by the Kentucky Supreme Court on February 17, 2005 (No. 2002-SC-0834-MR).

¹ Senior Judge Thomas D. Emberton, sitting as Special Judge by Assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Meanwhile Blair filed a motion for RCr 11.42 relief on June 1, 2004. His grounds for vacating judgment were that the trial judge should have disqualified himself, that there was a break in the chain of custody of certain blood samples, and that prosecutorial and witness misconduct occurred during trial. The Boyd Circuit Court summarily denied, simply stating that Blair's motion did "not conform to the requirements of RCr 11.42."

We are likewise constrained to deny Blair the requested relief. The question of recusal should have been brought "immediately upon discovery of the facts upon which the disqualification rests." Bussell v. Commonwealth, 882 S.W.2d 111, 113 (Ky. 1994)(citations omitted). The evidentiary issue regarding the chain of custody was unsuccessful on direct appeal and will not be reconsidered here. Sanders v. Commonwealth, 89 S.W.3d 380, 385 (Ky. 2002), cert. denied, 540 U.S. 838 (2003); Eggerson v. Commonwealth, 656 S.W.2d 744 (Ky.App. 1983). And the misconduct argument was also a matter for direct appeal, not properly brought in a post-conviction motion. Sanders, 89 S.W.3d at 385.

Furthermore, there was no demonstration by Blair that he suffered any prejudice as a result of the alleged errors. Sanders, supra at 386. As there was no likelihood that the outcome of Blair's trial would have been any different, the

trial court correctly determined that the RCr 11.42 motion should be denied.

The judgment of the Boyd Circuit Court is affirmed.

ALL CONCUR.

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