

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000985-MR

CHAD SHOFNER

APPELLANT

v. APPEAL FROM TAYLOR CIRCUIT COURT
HONORABLE DOUGHLAS M. GEORGE, JUDGE
ACTION NO. 01-CR-00141

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: LAMBERT, TAYLOR, AND WINE, JUDGES.

TAYLOR, JUDGE: Chad Shofner brings this appeal from a February 20, 2006, Order of the Taylor Circuit Court denying his Ky. R. Crim. P. (RCr) 11.42 motion to vacate a sentence of life without the possibility of parole. We affirm.

It is undisputed that on November 26, 2001, appellant shot and killed Michael Appleby and Darlene Appleby at their residence in Taylor County, Kentucky. Appellant's estranged wife, Jennifer Shofner (now Jennifer Caffee),¹ was having an affair

¹ Jennifer Shofner was estranged from her husband, Chad Shofner, at the time of the shooting. Jennifer and Chad's marriage was subsequently dissolved.

with Michael and was living with him at the time of the murders. Darlene was Michael's mother. After killing Michael and Darlene, appellant kidnapped Jennifer.

Appellant was indicted upon two counts of capital murder (Kentucky Revised Statutes (KRS) 507.020) and upon one count of kidnapping (KRS 509.040). Appellant eventually entered a guilty plea to all charges without the benefit of a plea bargain from the Commonwealth. He also agreed to waive jury sentencing. The parties agreed that the trial court would sentence appellant without a jury and that all sentences would be available, including the death penalty. At the sentencing hearing, the Commonwealth introduced evidence that the crimes were premeditated and offered evidence that appellant previously stated he was going to kill Michael and Jennifer. For the defense, appellant testified that he did not go to the residence intending to kill anyone and that he only took the rifle for self-protection. Appellant stated that he shot Michael in self-defense and shot Darlene accidentally. Multiple witnesses were called to testify as to appellant's upbringing, relationships, and social interactions. On October 31, 2002, the circuit court sentenced appellant to two terms of life imprisonment without the possibility of parole. These terms were ordered to run concurrently. Appellant's direct appeal was affirmed by the Supreme Court in *Shofner v. Commonwealth*, 149 S.W.3d 401 (Ky. 2004).

Thereafter, appellant filed an RCr 11.42 motion to vacate his sentence. The circuit court conducted an evidentiary hearing and denied the motion. This appeal follows.

Appellant contends the circuit court committed error by denying his RCr 11.42 motion to vacate sentence. To prevail, appellant must demonstrate that trial counsel's assistance was ineffective and that such ineffective assistance was prejudicial. *Strickland v. Washington*, 466 U.S. 668 (1984). To demonstrate prejudice, there must exist a reasonable probability that but for counsel's errors, the result of the proceedings would have been different. *Id.*

Appellant contends that trial counsel was ineffective for failing to introduce evidence during the sentencing hearing showing the depth of Jennifer's alleged manipulation and that such manipulation constituted mitigating evidence of extreme emotional distress (EED) under KRS 532.025(2)(b)(2). If the trial court were aware of such statutory mitigating evidence, appellant contends there existed a reasonable probability that he would have received a less severe sentence. We disagree.

In its order denying appellant's RCr 11.42 motion, the circuit court stated there was “sufficient testimony at the sentencing hearing to show the stormy relationship that existed between Shofner and his wife [Jennifer]. The witnesses called by Shofner at the RCr 11.42 hearing did not produce any additional significant evidence for the Court to consider that the Court did not already have from the sentencing hearing.” Moreover, the court noted that Jennifer also testified at the RCr 11.42 hearing. In particular, she testified that appellant told her that he would kill her. Jennifer also testified that she informed appellant she was in love with Michael and wanted nothing to do with appellant. At best, the circuit court noted that evidence of Jennifer's alleged manipulation

of appellant was contradicted by Jennifer's own testimony. The circuit court also pointed out that Jennifer's testimony at the RCr 11.42 hearing would have been damaging to appellant at sentencing, and if introduced, there “would have had a greater [sic] chance of receiving the death penalty.”

Additionally, the heinous nature of the crimes that appellant pleaded guilty to must be considered. Both victims died of gunshot wounds to the head, which at the very least indicated an intent on the part of appellant to kill the victims. Trial counsel's defense during sentencing effectively spared appellant's life by avoidance of the death penalty.

Appellant also believes the circuit court erred by not considering evidence of EED as a statutory mitigator rather than as a defense:

Chaffee's alleged manipulation of Appellant (if believed) would not trigger the EED defense. . . . However, the Circuit Court seemingly did not grasp that Appellant was not relying on EED as a complete defense. Appellant relied on it only as a mitigator.

Appellant's Brief at 17.

The circuit court did not misconstrue appellant's argument. Indeed, the circuit court specifically concluded that trial counsel “discussed the statutory mitigators and eventually decided not to use certain evidence because that evidence may back-fire [sic] and actually not be mitigating evidence at all.” It is clear the circuit court was aware that EED could be used as a defense and as a statutory mitigating circumstance.

In sum, considering the evidence as a whole, we cannot say that appellant demonstrated that trial counsel's performance was deficient and/or that such deficiency was prejudicial. *See Strickland v. Washington*, 466 U.S. 668 (1984). Thus, we hold the circuit court properly denied appellant's RCr 11.42 motion to vacate sentence.

For the foregoing reasons, the Order of the Taylor Circuit Court is affirmed.

ALL CONCUR.

BRIEFS AND ORAL ARGUMENT
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