

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001894-MR

KEITH FIELDS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JAMES M. SHAKE, JUDGE
ACTION NO. 98-CR-000889

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: ACREE AND LAMBERT, JUDGES; ROSENBLUM,¹ SENIOR JUDGE.

ACREE, JUDGE: Keith Fields appeals, *pro se*, from an order of the Jefferson Circuit Court denying his motion for post-conviction relief pursuant to Kentucky Rule of Criminal Procedure (RCr) 11.42. Fields pleaded guilty to charges of murder, criminal syndication, criminal facilitation to attempted murder, criminal facilitation to kidnapping, criminal facilitation to first-degree robbery, and first-degree trafficking in a controlled substance. He opted for jury sentencing at which the Commonwealth agreed to exclude

¹ Senior Judge Paul W. Rosenblum sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

the death penalty and argue for a sentence of life without possibility of parole for twenty-five years. Fields now challenges the sufficiency of the indictment under which he was charged and raises issues concerning his representation at the time of his guilty plea.

After a careful review, we affirm the trial court.

Fields and five co-defendants were indicted on charges of murder, as well as complicity to commit the offenses of criminal syndication, attempted murder, kidnapping, first-degree robbery, and first degree trafficking. In addition, two of the co-defendants were charged with being persistent felony offenders in the first degree and two were charged with being persistent felony offenders in the second degree. All six defendants eventually pled guilty to at least some of the charges. A seventh co-defendant pled guilty in juvenile court. The charges arose out of a conspiracy by one group of drug dealers to rob and murder another drug dealer.

Andre Smith, a large-scale drug dealer, and Miata Parker lost \$240,000.00 in an out-of-state drug deal gone bad. In order to recoup his losses, Smith decided to rob Cecil Turner, Jr. who was known to have access to large quantities of cocaine. The robbery and murder plans were discussed by Smith, Kellenthia Jones, Parker, and Curtis Coleman at a Louisville nightclub. The next morning, Turner arrived at the apartment shared by Smith and Coleman, expecting to negotiate the sale of five kilos of cocaine. Smith told Curtis to call Marcellus Mason to help with the murder and to obtain a gun from Jones. Meanwhile, Turner took Smith to his mother's house to retrieve the drugs he planned to sell.

On the way back to Smith's apartment, Turner asked his seventeen year-old brother, Chad, to follow them. Chad was not known to have any involvement in any of the drug trafficking activities. Smith and Turner stopped at another house on the way back to the apartment. Unknown to Turner, Smith instructed Keith Smith and Michael Rushin to follow them back to the apartment and assist with Turner's murder. He offered to pay them with a quantity of cocaine.

When they arrived back at the apartment, Smith closed the garage door while Chad was still outside in his car. On the staircase leading to the apartment, Smith met Mason and Fields. He told them to take Chad somewhere and kill him. Smith had not discussed the plan with Fields, but he offered Mason a kilo of cocaine for killing Chad. Fields and Mason told Chad to go with them to get the money for the drugs. They parked Chad's car behind Crums Lane Elementary School and Mason got out of the passenger side, supposedly to get the money. At that point Fields, sitting in the back seat, shot Chad twice at point blank range and killed him.

Meanwhile, inside the apartment, the others robbed Turner of his cocaine. Smith told them to take Turner somewhere and kill him. Turner struggled to escape and was stabbed repeatedly and hit on the head with a gun. He eventually broke away from his captors outside the apartment. Turner arrived at the hospital with stab wounds in his stomach, both arms, and one hand. He required ninety stitches.

Smith met Coleman and Parker a few hours later and divided the cocaine between them. Parker got four kilos, Coleman got the remaining kilo, and Smith said to

tell Mason he'd be taken care of later. Coleman was arrested later that night at his parents' house, and he took police to Fields' apartment. While he was in custody, Fields confessed to murdering Chad in a taped statement. Smith found out about Chad's murder the next day at which point he fled to Atlanta where he was arrested six months later.

Fields and his co-defendants were indicted four days after Chad's murder and Turner's attempted murder. Smith and Coleman entered guilty pleas and were scheduled to testify for the Commonwealth at Fields' trial. On the day of trial, Fields' two attorneys negotiated a plea agreement with the Commonwealth. The attempted murder, kidnapping and robbery charges would be amended from complicity to facilitation, which lowered the potential penalties Fields faced. Fields entered an open plea and agreed that the sentencing jury would hear any evidence that would have been admissible during the guilt phase of his trial. He also waived the right to appeal his conviction. In exchange, the Commonwealth agreed to exclude the death penalty, but required Fields to admit to the existence of an aggravating factor: murder for hire. The sentencing jury heard evidence from Smith, Coleman, and Turner, as well as the lead detective and the doctor who performed Chad's autopsy. At the end of the evidence, the jury recommended a sentence of life without possibility of parole for twenty-five years for murder with the sentences for the other offenses to be run concurrently.

Fields subsequently filed a *pro se* RCr 11.42 motion and two supplemental motions, one through counsel. He alleged the indictment failed to state an offense with regard to the murder and attempted murder charges and, further, that the language used in

those two counts subjected him to double jeopardy. He further claimed trial counsel was ineffective because he advised him to plead guilty. The trial court denied the motion without an evidentiary hearing. This appeal followed.

Count One of the indictment charged that the co-defendants when “acting alone or in complicity, committed the offense of Murder by intentionally or under circumstances manifesting extreme indifference to human life wantonly [caused] the death of Chad Turner.” Kentucky Revised Statutes (KRS) 507.020. The same language was used in Count Five with regard to the attempted murder of Turner, except the phrase “attempted to cause the death” was substituted. KRS 506.010. Fields argues these counts failed to charge a public offense and also subjected him to double jeopardy. He bases his claim on the inclusion of the alternate theories of intentional murder, KRS 507.020(a), and wanton murder, KRS 507.020(b). Noting that intentional murder and wanton murder require different mental states, he argues the indictment charged him with two offenses relative to each crime. We disagree.

RCr 6.10 requires an indictment to contain “a plain, concise and definite statement of the essential facts constituting the specific offense with which the defendant is charged” and “the official or customary citation of any applicable statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated. . . .” RCr 6.10 (2) and (3). “An indictment is sufficient if it fairly informs the accused of the nature of the charged crime. . . .” *Thomas v. Commonwealth*, 931 S.W.2d 446, 449 (Ky. 1996). Counts One and Five of the indictment clearly stated the basic

facts of the allegations against Fields. Moreover, the applicable criminal statutes were also referenced. The indictment, on its face, sufficiently informed Fields of the nature of the charges against him.

We further find no merit to Fields' contention that the language of the indictment could have subjected him to double jeopardy. The constitutional prohibition against double jeopardy protects an individual from being subject to criminal punishment more than once for the same offense. *Hudson v. U.S.*, 522 U.S. 93, 99, 118 S.Ct. 488, 139 L.Ed.2d 450 (1997). The indictment did not allow Fields to be convicted of both intentional and wanton murder of the same victim. Rather, it allowed Fields to be convicted of murder as long as the Commonwealth could prove that he acted intentionally *or* wantonly in causing Chad's death. The same reasoning applies to the charge of attempting to murder Turner. In neither case, did the indictment subject Fields to the risk of multiple punishments for the same act.

In addition, Fields claims his defense attorneys rendered ineffective assistance when they advised him to plead guilty to the amended indictment. The test for ineffective assistance of counsel was set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), and more recently articulated in *Fraser v. Commonwealth*, 59 S.W.3d 448, 456-57 (Ky. 2001).

The two-pronged test for ineffective assistance of counsel is (1) whether counsel made errors so serious that he was not functioning as “counsel” guaranteed by the Sixth Amendment, and (2) whether the deficient performance prejudiced the defense.

Because he pleaded guilty, Fields is required to show “that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.” *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985).

Fields argues that defense counsel failed to investigate possible exonerating evidence. He bases this assertion, in part, on the testimony of Smith and Coleman who did not implicate him in the initial planning of the robbery and murder of Turner. Smith, testifying for the Commonwealth at the sentencing hearing, told the jury that Fields was a street-level drug dealer, packaging and selling cocaine he obtained from Smith and Coleman. He also said that Fields was not present during the conversation where the robbery and murder of Turner was planned and did not get paid for killing Chad. Coleman confirmed Fields' status as a drug dealer, but told the jury that the robbery and murder plans were not made until the day the events occurred. According to Coleman, Mason came to the apartment and then called Fields to come over. As Smith was leaving with Turner, he told Mason and Fields to take Chad somewhere and kill him. Coleman saw Mason hand Fields a gun which he pocketed. He also identified brown gloves which Mason and Fields had at the apartment prior to Chad's murder.

The jury was likewise permitted to hear Fields' taped statement. Fields told the lead detective that Mason called him at 2:00 p.m. and told him to bring a gun to Smith's apartment. Fields discussed the murder plan with Mason and Coleman at the

apartment while Turner and Smith were away picking up the cocaine. Fields agreed to participate in Turner's murder in exchange for one-half kilo of cocaine. Coleman gave Fields a .44 caliber revolver, and Fields gave his 9 mm handgun to Mason. Then Fields went back to his apartment to retrieve two pairs of gloves to prevent them from leaving fingerprints at the crime scene. Fields and Mason rode with Chad to the murder scene. After Mason got out of the car, Fields apologized to Chad before shooting him in the back of the head and, a few seconds later, in the back. He caught up with Mason and they got a ride home from a passing friend.

The autopsy showed that Chad was killed instantly by the first bullet. The lead detective testified that police found the murder weapon, two spent shell casings, a baseball sized bag of cocaine, and three brown gloves during a search of Fields' apartment. Fibers from Chad's car matched the gloves found at Fields' apartment, as well as Fields' and Mason's clothing.

Our appellate courts have firmly opined that a recommendation by defense counsel to plead guilty in a given case is no indication of ineffective assistance. *Beecham v. Commonwealth*, 657 S.W.2d 234, 236-37 (Ky. 1983). Fields confessed to murdering Turner's teenaged brother who had no known involvement in the drug scene. Chad was killed simply because he was in the wrong place at the wrong time. Fields' guilt is uncontroverted, and he faced the death penalty for murdering Chad. There was strong evidence of Fields' guilt and little chance his motives in committing the crime would elicit sympathy from the jury. In such cases, it is not ineffective trial strategy for defense

counsel to seek a plea agreement which excludes the death penalty. *Johnson v. Commonwealth*, 103 S.W.3d 687, 694-95 (Ky. 2003); *Phon v. Commonwealth*, 52 S.W.3d 456, 460 (Ky.App. 2001).

Fields next contends that he could not have been convicted of criminal syndication because he was not present when the crimes against Turner were planned. In addition, he asserts he could not have been found guilty of participating in the attempted murder, kidnapping, and robbery of Turner because he was not at the scene. Therefore, he argues his attorneys rendered ineffective assistance by advising him to plead guilty to charges relating to these acts.

KRS 506.120(a) criminalizes participation in organized crime. Criminal syndicate is defined as

five (5) or more persons collaborating to promote or engage in any of the following on a continuing basis:

...

(e) Illegal trafficking in controlled substances as prohibited by KRS Chapter 218A. . . .

The indictment in this case charged six individuals with, among other offenses, first-degree trafficking. The evidence established that Fields was a street-level dealer obtaining his drugs from Smith and Coleman. Thus, his argument that he did not participate in a criminal syndicate is unpersuasive.

The partners in the criminal plan must agree to pursue the same criminal objective and may divide up the work, yet each is responsible for the acts of each other. *See Pinkerton v. United States*, 328 U.S. 640, 646, 66 S.Ct. 1180, 1183-1184, 90 L.Ed. 1489 (1946) (“And so long as the partnership in

crime continues, the partners act for each other in carrying it forward”). If conspirators have a plan which calls for some conspirators to perpetrate the crime and others to provide support, the supporters are as guilty as the perpetrators.

Salinas v. U.S., 522 U.S. 52, 63-64, 118 S.Ct. 469, 139 L.Ed.2d 352, (1997).

His attorneys did not render ineffective assistance by advising him to plead guilty to a charge for which there was sufficient evidence to convict him.

The same reasoning applies to the charges related to the offenses against Turner. Fields consented to help with the planned robbery and murder of Turner. Due to Turner's unforeseen decision to have his younger brother follow him to the drug rendezvous, Fields ended up murdering Chad, while other participants of the plot robbed and tried to kill Turner. Clearly, Chad's murder was committed in furtherance of the original plot against Turner to prevent authorities from identifying Turner's assailants. Thus, Fields could have been convicted of the offenses against Turner had he opted for a jury trial during the guilt phase.

Fields also attacks his guilty plea to first-degree trafficking arguing that both Smith and Coleman stated he never received the cocaine he was promised in payment for killing Chad. This ignores testimony from both witnesses that Fields was a street-level dealer, as well as evidence in the form of the baseball sized bag of cocaine found in his apartment after the murder. Once again, sufficient evidence of his guilt was presented to the sentencing jury, and it was not ineffective for his attorneys to advise him to plead guilty to this count of the indictment.

Finally, Fields claims his trial attorneys were ineffective for failing to object when Smith and Coleman testified on direct regarding their convictions and sentences for the charges in the indictment. We fail to perceive any prejudice to Fields. In fact, it is virtually certain defense counsel would have sought to impeach the testimony of Smith and Coleman by eliciting this same information on cross-examination.

For the foregoing reasons, the judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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