

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-002134-MR

ROBERT HATTON

APPELLANT

v. APPEAL FROM BATH CIRCUIT COURT
HONORABLE BETH LEWIS MAZE, JUDGE
ACTION NO. 02-CR-00043

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: NICKELL, THOMPSON, AND VANMETER, JUDGES.

THOMPSON, JUDGE: Robert Hatton appeals from an order of the Bath Circuit Court summarily denying his motion for post-conviction relief pursuant to Kentucky Rules of Criminal Procedure (RCr) 11.42 without holding an evidentiary hearing. For the reasons stated herein, we affirm.

On the evening of October 6, 2002, Hatton arrived at his residence along with his nine-year-old daughter, Jessica, where he observed his wife, Laura, his wife's sister, Christine, and Patty and Joe Wills, family friends, exiting the residence.

Unbeknown to Hatton, his wife had planned to take Jessica and leave the premises before Hatton discovered that she had filed an Emergency Protective Order against him earlier that day for allegedly striking her in the face.

When Jessica exited Hatton's van, Laura met her in the driveway and led her to the Jeep which was parked in the driveway. Joe then drove the Jeep from the driveway at a normal rate of speed. Soon thereafter, Hatton's van suddenly appeared behind them and began repeatedly ramming the bumper of the Jeep. Patty then called 911 from her cell phone and informed authorities that Hatton was trying to kill them. Although Joe attempted to evade Hatton, after reaching a high rate of speed, the Jeep left the roadway and crashed into an embankment. As a result of the crash, Joe Wills was pronounced dead at the scene. Following the crash, Hatton's blood-alcohol concentration was revealed to be nineteen percent.

On October 18, 2002, the Bath County Grand Jury indicted Hatton for one count of murder, four counts of first-degree wanton endangerment, and one count of operating a motor vehicle while under the influence. After a jury trial, Hatton was found guilty of second-degree manslaughter and four counts of first-degree wanton endangerment. He was sentenced to twenty (20) years' imprisonment and fined \$1,000.

On August 26, 2004, in an unpublished opinion, No. 2003-SC-0722-MR, the Kentucky Supreme Court affirmed Hatton's conviction on direct appeal. On August 25, 2006, Hatton filed a motion to vacate his judgment pursuant to RCr 11.42, citing

ineffective assistance of counsel as his claim for relief. On September 21, 2006, Hatton's motion was summarily denied. This appeal follows.

Hatton's first allegation is that his defense counsel rendered ineffective assistance of counsel when counsel failed to establish that Joe Wills' death was the result of his own excessive speed rather than Hatton's conduct. Specifically, Hatton contends that "Joe Wills was one hundred percent at fault for driving too fast." Hatton contends that his counsel should have established that he was not responsible for the crash and, thus, was not responsible for Wills' death.

In reviewing an allegation of ineffective assistance of counsel, we are governed by the standard set out in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Under this standard, the movant must demonstrate (1) that counsel made serious errors resulting in a performance outside the range of professionally competent assistance guaranteed by the Sixth Amendment and (2) that the deficient performance prejudiced the defense so seriously that there is a reasonable likelihood that the outcome of the trial would have been different absent the errors. *MacLaughlin v. Commonwealth*, 717 S.W.2d 506, 507 (Ky.App. 1986).

Further, because the trial court denied Hatton's RCr 11.42 motion without conducting an evidentiary hearing, our review is limited to whether Hatton's motion "on its face states grounds that are not conclusively refuted by the record and which, if true, would invalidate the conviction." *Baze v. Commonwealth*, 23 S.W.3d 619, 622 (Ky. 2000). Finally, a trial court's RCr 11.42 ruling will not be disturbed unless it is clearly

erroneous. *Johnson v. Commonwealth*, 180 S.W.3d 494, 498 (Ky.App. 2005).

With this applicable standard, we conclude that Hatton's allegation that his defense counsel failed to establish the cause of Wills' death as his own reckless driving is without merit. According to Hatton's theory at trial, when he returned to his residence and Jessica exited his van, he claimed that he observed a man duck down, run around his Jeep, get into it, and speed away. Fearing that his daughter had been kidnapped, he pursued the fleeing Jeep until it crashed into an embankment.

Hatton's trial counsel made a strategic decision to offer a “defense of another” defense at trial in which he argued that Hatton's conduct was the result of his attempt to stop the kidnapping of his nine-year-old daughter. While this strategy did not focus on criticizing Wills' driving, had the jury believed his version of the facts and found his conduct reasonable, Hatton would have been acquitted of Wills' killing because of his belief that the deceased was about to kill or do great bodily harm to his daughter.

Consequently, we consider Hatton's counsel's decision not to focus on Wills' high-speed as a proper trial strategy decision. *Fuston v. Commonwealth*, 217 S.W.3d 892, 896 (Ky.App. 2007). While Hatton was found guilty of second-degree manslaughter, his defense counsel's strategy could have obtained an acquittal, and this strategy, despite its failure, will not be second-guessed by an appellate court. *Baze v. Commonwealth*, 23 S.W.3d at 624.

Hatton's next allegation is that his defense counsel rendered ineffective assistance of counsel when counsel failed to move for a mistrial. Specifically, during

deliberations, the jury found a dictionary in the jury room and looked up the word “indifference.” When questioned about this incident in open court, the jury foreman informed the court that the jury had not been influenced by the definition found in the dictionary. No juror objected to this declaration.

The trial court informed both parties that a mistrial was unnecessary because the jury had not been influenced by the extraneous information. Although the Commonwealth disagreed and insisted on the granting of a mistrial, Hatton and his counsel specifically waived the jury irregularity. On direct appeal, pursuant to RCr 10.26, our Supreme Court reviewed the issue and ruled that Hatton had not demonstrated that the jury's use of the dictionary resulted in prejudice or affected his right to a fair trial.

Having reviewed the record, we agree with the conclusion reached by our Supreme Court. Even if counsel's failure to move for a mistrial was error, Hatton has failed to establish that he was prejudiced by this decision. Essentially, he has not demonstrated that his counsel's performance prejudiced his defense so seriously that there is a reasonable likelihood that the outcome of his trial would have been different absent the error. *MacLaughlin*, 717 S.W.2d at 507.

Hatton's final allegation is that conflict between himself and counsel throughout the trial deprived him of effective assistance of counsel. Because Hatton asserts many claims in this final allegation, we will address each claim in turn.

With regard to his blanket claim that his disagreements with counsel deprived him of effective assistance of counsel, Hatton's allegations are insufficient for

relief pursuant to RCr 11.42(2). Hatton has not stated what disagreements he had with his counsel and how these disagreements prejudiced his case. General and vague allegations without specific factual allegations of error and prejudice cannot be grounds for the granting of post-conviction relief and warrant summary dismissal. *Mills v. Commonwealth*, 170 S.W.3d 310, 330 (Ky. 2005).

Hatton also claims that his counsel overestimated his chances of receiving an acquittal. Just as above, Hatton has failed to state his factual allegation with sufficient specificity and there can be no relief. *Farmer v. Commonwealth*, 450 S.W.2d 494 (Ky. 1970).

Hatton's next claim is that his counsel failed to contest the Commonwealth's inconsistent evidence as to whether he rammed the Jeep. During trial, Hatton stated that he pursued the Jeep to rescue his daughter, and the surviving witnesses testified that he rammed the Jeep during this high-speed chase. Thus, the evidence was clear that he at least engaged the Jeep in a high-speed chase.

Based on these facts, even if Hatton did not ram the Jeep, there is no reasonable likelihood that the jury's verdict would have been different. Second-degree manslaughter and wanton endangerment convictions are supported when a defendant's conduct constitutes a conscious disregard of a substantial and unjustifiable risk. *Ramsey v. Commonwealth*, 157 S.W.3d 194, 196 (Ky. 2005) (first-degree wanton endangerment); *Saylor v. Commonwealth*, 144 S.W.3d 812, 818-819 (Ky. 2004) (second-degree manslaughter). Because Hatton engaged Wills in an unprovoked high-speed chase and

the jury disbelieved his kidnapping theory, the alleged error was not prejudicial to the outcome of his trial.

Hatton next claims that his defense counsel did not adequately prepare for his case resulting in his failure to present a “choice of evils” defense. We note that Hatton's counsel argued a “defense of another” defense which is what Hatton essentially argues in his brief (i.e., Hatton believed that his daughter had been kidnapped, and it was reasonable for him to attempt to get her back). Despite this theory, Hatton was found guilty, and this claim merits no relief.

Finally, Hatton claims that his counsel was ineffective when he told the jury during his closing argument that Hatton was guilty of something but not murder. While Hatton contends that this statement was inappropriate, we believe this to be a part of his counsel's trial strategy. Often times, when a serious crime has been committed, it is effective to admit to the jury that one's client's conduct was not perfect (guilty of something) but did not rise to the depravity the Commonwealth asserts.

Here, it appears Hatton's defense counsel believed that the Commonwealth's case had been effective, and counsel made a successful attempt to avoid a conviction on the most serious charge of murder at the risk of a conviction on a lesser-included offense. Had Hatton been convicted of murder, he could have potentially received a sentence of life imprisonment without the benefit of probation or parole. Therefore, his counsel's statement was proper trial strategy under the circumstances.

Because we have concluded that all of Hatton's allegations are without merit and refuted by the record, the trial court did not err by denying Hatton's motion for an evidentiary hearing. *Harper v. Commonwealth*, 978 S.W.2d 311, 314 (Ky. 1998).

For the foregoing reasons, the order of the Bath Circuit Court denying Hatton's motion for post-conviction relief pursuant to RCr 11.42 is affirmed.

ALL CONCUR.

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