

Commonwealth Of Kentucky

Court of Appeals

NO. 2007-CA-000155-MR

JOEY MEADOWS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE A.C. MCKAY CHAUVIN, JUDGE
ACTION NO. 02-CR-000861

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, KELLER, AND MOORE, JUDGES.

CLAYTON, JUDGE: Appellant, Joey Meadows, appeals from an order of the Jefferson Circuit Court denying his motion for post-conviction relief pursuant to RCr 11.42.

Appellant asserts that he was denied effective assistance of counsel. He contends that his counsel failed to effectively refute the evidence presented by the Commonwealth in:

failing to generate any meaningful investigation; failing to be prepared for trial; failing to investigate incident reports by the victim; failing to interview and obtain statements from school personnel; and failing to challenge testimony concerning bruises found on the

victim. He also argues that it was an error of the trial court to summarily deny his motion for relief without granting him an evidentiary hearing.

Appellant was found guilty of sexual abuse in the first degree, sodomy in the first degree, and false imprisonment in the first degree after a jury trial in Jefferson Circuit Court. This conviction was affirmed by the Kentucky Court of Appeals and the Kentucky Supreme Court denied discretionary review.

On September 20, 2006, Appellant filed a motion to vacate the judgment pursuant to RCr 11.42 in the Jefferson Circuit Court. The trial judge denied the motion, finding that he had failed to establish specific material facts and had only made conclusory allegations unsupported by specific facts. This appeal followed the denial of Appellant's subsequent CR 59.05 motion to alter or amend.

FACTUAL BACKGROUND

Appellant met the victim (T.H.) at a bar in Louisville on March 3, 2002. T.H. was originally at the bar with her cousin Valerie. T.H. left the bar with the Appellant and went to his sister's residence. T.H. went to bed and testified that she woke up when the Appellant began sexually assaulting her. The assault continued and ended when T.H. bit the Appellant's penis.

The following morning, T.H. left the residence and phoned emergency personnel from a local school. Appellant contends that the sex between himself and T.H. was consensual. He also asserts that his trial counsel was ineffective and that, pursuant to RCr 11.42, he is entitled to relief.

STANDARD OF REVIEW

In order to prove ineffective assistance of counsel, a defendant must satisfy a two-part test showing both that counsel's performance was deficient and that the deficiency resulted in actual prejudice affecting the outcome of the proceeding.

Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The burden is on the defendant to establish that his counsel was ineffective. *Id.* at 690.

In determining whether the defendant was prejudiced, the court must determine whether "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland* at 694. "It is not enough for defendant to show that the error by counsel had some conceivable effect on the outcome of the proceeding." *Sanders v. Commonwealth*, 89 S.W.3d 380, 386 (Ky. 2002). With this standard in mind, this Court will examine the arguments presented by the Appellant.

DISCUSSION

This Court will begin with Appellant's last argument which is that the trial court abused its discretion in failing to conduct an evidentiary hearing into his RCr 11.42 issues and claims. RCr 11.42 requires a hearing on a post-conviction motion only "[i]f the answer raises a material issue of fact that cannot be determined on the face of the record" RCr 11.42(5).

A general allegation of ineffective assistance of counsel is not sufficient to justify a hearing since before conducting a hearing, the court is entitled to know with specificity in what respect the prisoner claims counsel failed to give him effective

assistance of counsel so that it can be determined from the face of the motion whether the facts, if proved, constitute a constitutional violation. *Ringo v. Commonwealth*, 391 S.W.2d 392 (Ky. 1965). Thus, it is not an abuse of discretion to summarily deny a motion pursuant to RCr 11.42 in this instance. *Parsley v. Commonwealth*, 400 S.W.2d 202 (Ky. 1966).

The Appellant contends that his trial counsel failed to “meaningfully” refute the Commonwealth’s expert witnesses. He argues that the expert hired to examine his wounds and testify as to how he had received them did not refute the testimony of the experts in the Commonwealth’s case against him.

Dr. Brad Smock examined the Appellant’s penis and was not able to testify as to whether the bite was intentional. Foundation was properly laid and the trial court allowed Dr. Smock to testify as an expert regarding the cause of the wound. There is no indication that any other expert would have been able to ascertain whether the bite made by T.H. was intentional. Thus, trial counsel was not ineffective in using Dr. Smock as an expert nor in the examination of him during the trial.

Next, Appellant argues that his counsel was ineffective in that he did not “generate” any “meaningful” investigation. Specifically, Appellant asserts that his counsel did not interview multiple individuals who were working at a Meijer’s store who observed himself and T.H. on the evening in question. According to Appellant, the two of them were seen by these employees kissing, hugging, and in various stages of displaying affection. None of these witnesses, however, were in the Appellant’s sister’s home the night of the incident. Given the distance in time of the employees allegedly observing the Appellant and T.H., as well as the fact that none of them witnessed any

events later in the evening when the assault occurred, this Court finds that there is no indication the investigation into these alleged witnesses would have changed the outcome of the Appellant's trial.

In a similar vein, Appellant asserts that his trial counsel was ineffective by failing to interview school personnel at the school where T.H. phoned emergency services. T.H. was taken to a hospital emergency room for examination after her stop at the school. Evidence of the examination was presented to the jury at trial. "The burden of proof [is] upon the appellant to show that he was not adequately represented by appointed counsel." *Osborne v. Commonwealth*, 992 S.W.2d 860, 863 (Ky.App. 1998), citing *Jordan v. Commonwealth*, 445 S.W.2d 878, 879 (Ky. 1969).

The Appellant has not shown any evidence which the school personnel may have given that would indicate the outcome of his trial would have been different. Consequently, his appeal fails on all issues which he has raised.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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