

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2009-CA-000127-MR

RENE ROBLERO

APPELLANT

v. APPEAL FROM BARREN CIRCUIT COURT  
HONORABLE PHIL PATTON, JUDGE  
ACTION NO. 04-CR-00034

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: TAYLOR, CHIEF JUDGE; DIXON, JUDGE; HENRY,<sup>1</sup> SENIOR JUDGE.

DIXON, JUDGE: Appellant, Rene Roblero, appeals *pro se* from an order of the Barren Circuit Court denying his motion for post-conviction relief pursuant to RCr 11.42. Finding no error, we affirm.

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<sup>1</sup> Senior Judge Michael L. Henry sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statute (KRS) 21.580.

Appellant was convicted in the Barren Circuit Court of wanton murder and tampering with physical evidence in the December 2003 shooting death of Jose Juan Carillo Blanco. He was sentenced to twenty years' imprisonment. Appellant's convictions and sentence were affirmed by the Kentucky Supreme Court on direct appeal. *Roblero v. Commonwealth*, 2005-SC-000301-MR (October 19, 2006).

On March 28, 2007, Appellant filed a *pro se* motion to vacate his sentence pursuant to RCr 11.42. Therein, he alleged that trial counsel was ineffective for failing to ensure that he was provided with adequate interpreters and for failing to investigate the existence of an individual named "Pedro" or "Pepe." The trial court thereafter granted Appellant's motion for the appointment of counsel. However, on November 20, 2008, Appellant moved to forgo an evidentiary hearing and submit the matter on the pleadings. On December 17, 2008, the trial court entered an order denying Appellant's RCr 11.42 motion. Thereafter, in response to a motion from Appellant, the trial court rendered specific findings of fact and conclusions of law. This appeal ensued.

In an RCr 11.42 proceeding, the movant has the burden to establish convincingly that he was deprived of some substantial right that would justify the extraordinary relief afforded by the post-conviction proceeding. *Dorton v. Commonwealth*, 433 S.W.2d 117, 118 (Ky. 1968). An evidentiary hearing is warranted only "if there is an issue of fact which cannot be determined on the face of the record." *Stanford v. Commonwealth*, 854 S.W.2d 742, 743-44 (Ky. 1993),

*cert. denied*, 510 U.S. 1049 (1994); RCr 11.42(5). *See also Fraser v. Commonwealth*, 59 S.W.3d 448, 452 (Ky. 2001); *Bowling v. Commonwealth*, 981 S.W.2d 545, 549 (Ky. 1998), *cert. denied*, 527 U.S. 1026 (1999). “Conclusionary allegations which are not supported by specific facts do not justify an evidentiary hearing because RCr 11.42 does not require a hearing to serve the function of a discovery deposition.” *Sanders v. Commonwealth*, 89 S.W.3d 380, 385 (Ky. 2002), *cert. denied*, 540 U.S. 838 (2003), *overruled on other grounds in Leonard v. Commonwealth*, 279 S.W.3d 151 (Ky. 2009). However, when the trial court conducts an evidentiary hearing, the reviewing court must defer to the determinations of fact and witness credibility made by the trial judge. *McQueen v. Commonwealth*, 721 S.W.2d 694 (Ky. 1986); *Commonwealth v. Anderson*, 934 S.W.2d 276 (Ky. 1996); *McQueen v. Scroggy*, 99 F.3d 1302 (6th Cir. 1996).

*Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), sets forth the standards which measure ineffective assistance of counsel claims. In order to be ineffective, performance of counsel must fall below the objective standard of reasonableness and be so prejudicial as to deprive a defendant of a fair trial and a reasonable result. *Id.* “Counsel is constitutionally ineffective only if performance below professional standards caused the defendant to lose what he otherwise would probably have won.” *United States v. Morrow*, 977 F.2d 222, 229 (6th Cir. 1992), *cert. denied*, 508 U.S. 975 (1993). Thus, the critical issue is not whether counsel made errors, but whether counsel was so

“manifestly ineffective that defeat was snatched from the hands of probable victory.” *Id.*

In considering ineffective assistance, the reviewing court must focus on the totality of evidence before the trial court or jury and assess the overall performance of counsel throughout the case in order to determine whether the alleged acts or omissions overcome the presumption that counsel rendered reasonable professional assistance. *Strickland*; see also *Kimmelman v. Morrison*, 477 U.S. 365, 106 S.Ct. 2574, 91 L.Ed.2d 302 (1986). A defendant is not guaranteed errorless counsel, or counsel judged ineffective by hindsight, but counsel likely to render reasonably effective assistance. *McQueen v. Commonwealth*, 949 S.W.2d 70 (Ky. 1997), *cert. denied*, 521 U.S. 1130 (1997). The Supreme Court in *Strickland* noted that a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. *Strickland*, 466 U.S. at 689, 104 S.Ct. at 2065.

Appellant first argues that trial counsel provided ineffective representation with respect to the court-appointed interpreters. Although Appellant concedes there are no Kentucky cases on point, he cites to an Iowa decision, *Ledezma v. State*, 626 N.W.2d 134 (Iowa 2001), wherein the court held that any deficient conduct on the part of the interpreter can be imputed to the attorney as ineffective representation. We find no merit to this argument.

On direct appeal, our Supreme Court addressed Appellant's argument that his interpreters were so deficient that he was effectively not present at trial as provided for in RCr 8.28(1):

[W]e note that the interpreters provided by the Court were Qualified Level 1 interpreters pursuant to Rule of Administrative Procedure, Part IX, Section 8. The trial court was well within its discretion in selecting these interpreters to assist Appellant during the course of the trial, including arraignment and all other critical stages of the trial where Appellant's presence is mandated by RCr 8.28(1).

*Roblero v. Commonwealth*, Slip Opinion 8-9. Although the issue was unpreserved on direct appeal and thus analyzed under the palpable error standard, the Court noted that there was no evidence that Appellant was dissatisfied with his interpreters, as he did not bring it to the attention of either the trial court or trial counsel.

The law regarding the removal of an interpreter is contained in KRS 30A.410(2), which provides:

(2) Upon request of the person for whom the interpreter is appointed, or on the court's own motion, an interpreter may be removed for inability to communicate with the person, or if for reasonable cause another interpreter is so desired by the person for whom the interpreter is appointed, or because the services of an interpreter are not desired by the person.

Clearly, the burden was on Appellant to bring any complaints he had to the attention of the trial court or his trial counsel. Appellant was capable of communicating, as evidenced by a conversation with one of the police detectives

during which Appellant spoke only English, and as such, he certainly could have communicated any issues to his counsel.

Appellant has offered no evidence or particular instance where his court-appointed interpreters failed to adequately perform their duties. Nor has he described how he was prejudiced by the alleged deficient performance. Moreover, the trial court in its findings of fact specifically found that Appellant made no claim that he informed trial counsel that he desired new interpreters. Therefore, if counsel was unaware of Appellant's complaint, we clearly cannot conclude that his performance fell outside the wide range of reasonable professional assistance.

*Strickland*, 466 U.S. at 689, 104 S.Ct. at 2065.

Appellant next argues that counsel provided ineffective representation by failing to investigate the existence of another perpetrator. Specifically, upon his arrest, Appellant told police he was forced to shoot the victim by an individual named "Pepe." Later, in a second statement, he claimed the individual was named "Pedro." Appellant claims that this was exculpatory evidence that someone else committed the crime and thus, counsel had a duty to investigate and locate this individual. Again, we disagree.

In *Haight v. Commonwealth*, 41 S.W.3d 436, 446 (Ky. 2001), *overruled on other grounds* in *Leonard v. Commonwealth*, 279 S.W.3d 151 (Ky. 2009), the Kentucky Supreme Court held:

This Court has recognized the necessity for complete investigation by defense counsel. We must agree with the view expressed by the United States Supreme Court

in *Strickland, supra*, to the effect that counsel has a duty to make reasonable investigation or to make a reasonable decision that makes particular investigation unnecessary under all the circumstances and applying a heavy measure of deference to the judgment of counsel. A reasonable investigation is not an investigation that the best criminal defense lawyer in the world, blessed not only with unlimited time and resources, but also with the benefit of hindsight, would conduct. *Thomas v. Gilmore*, 144 F.3d 513 (7th Cir. 1998). The investigation must be reasonable under all the circumstances. *Stevens v. Zant*, 968 F.2d 1076 (11th Cir. 1992).

The record establishes that other than a first name, which Appellant could not even confirm whether it was “Pepe” or “Pedro,” he provided no information other than his opinion that this person probably fled to Mexico. The trial court noted that investigating officers were unable to discover any additional information about the existence of “Pepe/Pedro.” Further, the two other individuals who were present at the time of the shooting testified that Appellant arrived at the murder scene by himself. Thus, under the circumstances, it was not reasonable for trial counsel to engage in a search spanning the United States and Mexico for the existence of this unknown individual. Accordingly, counsel’s performance in this respect cannot be deemed ineffective. *Strickland*.

Finally, Appellant argues that the cumulative effect of his trial counsel’s errors warrants relief pursuant to RCR 11.42. However, this claim is without merit as we have determined that the individual claims of error are unsubstantiated. *Sanborn v. Commonwealth*, 975 S.W.2d 905, 913, (Ky. 1998),

*overruled on other grounds in Leonard v. Commonwealth, 279 S.W.3d 151 (Ky. 2009).*

The order of the Barren Circuit Court denying Appellant's motion for post-conviction relief pursuant to RCr 11.42 is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Rene Roblero, *Pro Se*  
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Jack Conway  
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