RENDERED: June 9, 2000; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-002095-MR
AND
NO. 1999-CA-000722-MR

KENNETH LAPRADD — APPELLANT

v.

APPEAL FROM KENTON CIRCUIT COURT
HONORABLE STEVEN R. JAEGER, JUDGE
HONORABLE RAYMOND E. LAPE, JR., JUDGE
ACTION NO. 93-CR-00531

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING
** ** ** ** **

BEFORE: COMBS, JOHNSON, and McANULTY, Judges.

COMBS, JUDGE: Kenneth LaPradd (LaPradd) appeals the order of the Kenton Circuit Court denying RCr 11.42 relief from his conviction of six (6) counts of using a minor in a sexual performance and of one (1) count of being a second-degree persistent felony offender (PFO II). He also filed a separate appeal from an order of the court denying his motion to proceed in *forma pauperis* for the purpose of obtaining a copy of his court record. These appeals have been consolidated and are addressed together in this

opinion. Having throughly reviewed the record on appeal, we affirm as to both appeals.

LaPradd was indicted in September 1993 on eleven counts of using a minor in a sexual performance and one count of being a PFO II. The charges followed a Kentucky State Police investigation of a complaint filed by the victim's grandmother. In August 1993, the victim, an eight-year-old little girl, confided in her grandmother that LaPradd had taken her and her brother from their Grant County home to his apartment in Covington, Kentucky. While en route, LaPradd stopped and purchased several pairs of women's and girl's panties. The victim described some of these panties has having no "middle" in them and stated that LaPradd had explained that there would be a cloth "there" when the pictures were taken; therefore, he would be unable to "see anything."

The victim's grandmother immediately reported the incident to Detective Ronald Harrison of the Kentucky State Police. Coincidentally, Detective Harrison had personal knowledge that in 1983, LaPradd, while a resident of Grant County, was convicted of using a minor in a sexual performance and of distributing material depicting a minor in a sexual performance. Detective Harrison confirmed LaPradd's Covington address, presented an affidavit to Kenton County District Court, and obtained a search warrant for LaPradd's residence.

A search of LaPradd's premises produced virtually thousands of photographic negatives stored in a safe. Many of these negatives depicted nude or partially clothed children.

Negatives were found of the victim posing in sexually provocative positions with her genitalia exposed. Numerous other photographic negatives were found, portraying children in lingerie inappropriate for their age.

LaPradd pleaded not guilty to the charges. Prior to his scheduled trial date, he moved for a suppression hearing, which was held on February 22, 1994. Upon LaPradd's motion, the court held another suppression hearing on January 11, 1995. At this time, LaPradd entered a conditional plea of guilty to the amended charges of six (6) counts of using a minor in a sexual performance and of being a PFO II — for which he was sentenced to twenty-years' incarceration.

On direct appeal, the Supreme Court unanimously affirmed LaPradd's conviction in an unpublished opinion. 95-SC-250-MR. LaPradd then moved for RCr 11.42 relief, a full evidentiary hearing, the right to proceed in *forma pauperis*, and an opportunity for a personal appearance in the circuit court. LaPradd alleged ineffective assistance of counsel. On July 23, 1998, the court entered its order denying all motions on the basis that LaPradd had failed to raise any ground upon which the court could grant relief. Appeal No. 1998-CA-002095 followed.

In February 1999, while this appeal was pending, LaPradd moved the trial court for the right to proceed *in forma pauperis* for the purpose of obtaining a copy of his court record. He argued that he was entitled to the record in order to prepare and perfect his appeal. The trial court denied the motion, and appeal No. 1999-CA-000722-MR followed.

In appeal No. 1998-CA-002095-MR, LaPradd contends that he was denied effective assistance of counsel because his trial attorney "failed to prepare a defense and make necessary pretrial motions that could have changed the outcome." LaPradd also contends that the incriminating evidence against him was obtained by means of an illegal search and seizure. Throughout his appellate brief, LaPradd alleges that the affidavit in support of the search warrant issued for his residence was based upon false and fraudulent statements. However, as he failed to raise this issue before the trial court, we will not address it here and restrict our discussion to the allegation of ineffective assistance of counsel.

"The burden of proof [is] upon the appellant to show that he was not adequately represented by appointed counsel." Jordan v. Commonwealth, Ky., 445 S.W.2d 878, 879 (1969). In order to establish that counsel's assistance was so deficient as to require reversal, the appellant must satisfy a two-part test:

> First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made error so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.

Strickland v. Washington, 466 U.S. 667-668, 80 L. Ed.2d 674, 693, 104 S. Ct. 2052 (1984). (Emphasis added.)

The record reflects that LaPradd's trial counsel moved the court to suppress evidence of: (1) LaPradd's prior felony conviction; (2) the numerous pairs of women's underwear discovered during the search of his residence; (3) all photographs developed from the negatives seized from the safe. Counsel also moved that LaPradd be charged with only one count of using a minor in a sexual performance rather than the eleven brought in the indictment. Counsel indicated his intent to introduce evidence of mental illness or insanity as a defense. All trial strategies were clearly designed to serve the defendant's interests in a positive vein.

Our review of the transcript of the suppression hearing discloses that trial counsel conducted himself competently — particularly in his cross-examination of Detective Harrison as to the contents of his sworn affidavit. LaPradd makes a bare allegation that the affidavit supporting the search warrant was procured by fraud. RCr 11.42(2) requires more than a blanket assertion or bare-faced allegation:

> The motion shall be signed and verified by the movant and shall state specifically the grounds on which the sentence is being challenged and the facts on which the movant relies in support of such grounds. Failure to comply with this section shall warrant a summary dismissal of the motion. (Emphasis added.)

The trial court did not err in denying LaPradd's motion for an evidentiary hearing due to his failure to comply with the specificity requirements of RCr 11.42(2). "No evidentiary hearing is required if the allegations of the RCr 11.42 motion

are insufficient." Harper v. Commonwealth, Ky., 978 S.W.2d 311, 315 (1998).

In his second appeal, No. 1999-CA-000722-MR, LaPradd raises seven claims of "injustice" because the trial court denied his request for a courtesy copy of his complete court record. We agree with the trial court that his RCr 11.42 request for relief on this point was essentially an exercise in futility. At the very most, it might have served as the basis for a "fishing expedition" for some supplementary ground upon which to seek relief. In Moore v. Ropke, Ky., 385 S.W.2d 161 (1964) our highest court addressed this identical issue in language that remains wholly relevant to the case before us:

> The petition in the circuit court recites as the only basis for petitioner's request: "Petitioner states he needs aforesaid records because he purports to make a direct attack upon the Judgment of his Conviction and needs the records to enable him to prepare an intelligent motion or petition in his own behalf."
>
> In other words, petitioner is on a fishing expedition and hopes to find something that may possibly lay the groundwork upon which to initiate further court proceedings.
>
> Only for the purpose of taking a timely appeal, in the proper case, may an indigent person be entitled to have furnished to him a transcript of the record of his conviction.

See also Gilliam v. Commonwealth, Ky., 652 S.W.2d 856, 858 (1983).

LaPradd cannot argue in good faith that he sought a transcript of his court record in order to meet the timeliness requirement for filing on appeal. Our records reflect that his

appellate brief was received by this Court on January 20, 1999; he filed his motion requesting the court record on February 8, 1999. Our review of the record as a whole reveals no legitimate basis for sustaining his motion. Thus, we find no error in the trial court's denial of this motion.

We affirm the judgments of the Kenton Circuit Court denying appellant RCr 11.42 relief and his motion for a copy of his court record.

ALL CONCUR.

BRIEF FOR APPELLANT *PRO SE*:

Kenneth LaPradd
Burgin, KY

BRIEF FOR APPELLEE:

A.B. Chandler III
Attorney General of Kentucky

Gregory C. Fuchs
Assistant Attorney General
Frankfort, KY