

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1996-CA-003454-MR

MICHAEL RUDELL SKINNER

APPELLANT

v. APPEAL FROM MARSHALL CIRCUIT COURT  
HONORABLE DAVID C. BUCKINGHAM, JUDGE  
INDICTMENT NO. 94-CR-00088

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING  
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BEFORE: DYCHE, GUIDUGLI, AND TACKETT, JUDGES.

DYCHE, JUDGE: Michael Skinner appeals from an order of the Marshall Circuit Court denying his motion to vacate his sentence pursuant to Kentucky Rules of Criminal Procedure (RCr) 11.42. Having been made unaware of any error by the trial court, we affirm.

Skinner was convicted of first-degree sodomy, unlawful transaction with a minor, and first-degree criminal abuse, and sentenced to a total of twenty years' imprisonment. The conviction was affirmed on direct appeal by the Supreme Court in an unpublished opinion rendered May 23, 1996 (95-SC-670-MR).

Skinner then filed a pro se RCr 11.42 motion, alleging ineffective assistance of counsel. A supplemental petition to the RCr 11.42 motion was filed by appointed counsel, and the trial court conducted an evidentiary hearing on November 1, 1996. The trial court issued an order denying the requested relief on November 20, 1996. This appeal followed.

Skinner alleges five errors which he claims constitute ineffective assistance: (1) failure to move for severance of the four charges in the indictment; (2) failure to object to the court-appointed special advocate sitting behind the children while they testified; (3) failure to request a hearing concerning certain psychiatric records of the children who testified; (4) failure to object to the admission of some incriminating letters written by Skinner; and (5) failure to call Skinner as a witness in his own defense.

Skinner's brief only remotely conforms to the strictures of Kentucky Rule of Civil Procedure (CR) 76.12(4)(c)(iv). It contains no supportive references to the record stating where each error alleged to have been committed by the trial court was preserved for review. In fact, it does not even outline the errors of the trial court; it merely echoes the claims made before the lower court. There are also no citations to authority explaining why each allegation was indeed an error by the lower court. The appellant's obligation includes satisfying the appellate court that the issue has been preserved and establishing for the appellate court the error committed by

the judge. CR 76.12(4)(c)(iv); Department of Highways v. Richardson, Ky., 424 S.W.2d 601 (1967).

Despite this potentially fatal deficiency, we have taken an overall look at this case and discern no error on the part of the trial court in denying Skinner's motion. As noted in the trial court's order denying Skinner's motion to vacate the judgment, the alleged deficiencies were either preserved for review on direct appeal, thus precluding them from collateral attack in this proceeding, were matters of sound trial strategy, or matters within the discretion of the trial court. See Commonwealth v. Pelfrey, Ky., 998 S.W.2d 460 (1999); Commonwealth v. Basnight, Ky. App., 770 S.W.2d 231, 237 (1989). "A defendant is not guaranteed errorless counsel, or counsel judged ineffective by hindsight, but counsel likely to render and rendering reasonably effective assistance." McQueen v. Commonwealth, Ky., 949 S.W.2d 70, 71 (1997). We believe counsel rendered reasonably effective assistance.

The judgment of the Marshall Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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