

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-000121-MR

KENNETH R. STAFFORD

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE LISABETH HUGHES ABRAMSON, JUDGE
ACTION NO. 81-CR-000729

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * ** **

BEFORE: BUCKINGHAM, JOHNSON, AND MILLER, JUDGES.

MILLER, JUDGE: Kenneth R. Stafford brings this *pro se* appeal from a December 2, 1999, Opinion and Order of the Jefferson Circuit Court. We affirm.

In 1982, Stafford was convicted of first-degree conspiracy to commit robbery. Kentucky Revised Statutes (KRS) 506.040 and 515.020. He was also adjudged a second-degree persistent felony offender. KRS 532.080(2). He was sentenced to eighteen years' imprisonment.

On September 6, 1983, Stafford filed a motion seeking Ky. R. Crim. P. (RCr) 11.42 relief. The motion languished in the

court until it was finally denied on August 24, 1999. Stafford then filed a motion for findings of fact and conclusions of law on September 2, 1999. On December 2, 1999, the Opinion and Order from which this appeal springs was entered.

Stafford claims ineffective assistance of counsel. Our review of ineffective assistance of counsel is under the precepts of Stickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), accord, Gall v. Commonwealth, Ky., 702 S.W.2d 37 (1985), cert. denied, 478 U.S. 1010, 106 S. Ct. 3311, 92 L. Ed. 2d 724 (1986). The court must find (1) an error in counsel's performance; and (2) prejudice resulting from the error affecting the outcome of the proceedings, i.e., a reasonable probability that but for counsel's deficient performance the result would have been different.

Although the court was undoubtedly correct in denying Stafford's claim of ineffective assistance of counsel under the precepts of Washington, we think this case should be properly disposed of in accordance with the Commonwealth's contention. The Commonwealth points out that this matter remained unprosecuted in the circuit court for sixteen years. The apparent reason is that Stafford was released on parole and did not become concerned with the motion until he was returned to prison. We think a denial of Stafford's RCr 11.42 motion for failure to prosecute in a timely manner would have been appropriate.

Finally, we point out that the basis of Stafford's claim of ineffective assistance lies in the counsel's failure to

adequately cross-examine a prosecution witness. We find no merit in this contention.

For the foregoing reasons, the opinion and order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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