

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002750-MR

ELIZABETH TURPIN

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE GARY D. PAYNE, JUDGE
ACTION NO. 86-CR-00172

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; DYCHE AND KNOPF, JUDGES.

DYCHE, JUDGE: On February 3, 1986, Michael Turpin was stabbed to death by Keith Bouchard with the aid of Karen Brown.

Michael's body was dumped into a pond on Lakeside Golf Course in Lexington, Kentucky. Indictments were returned versus Bouchard, Brown, and Elizabeth Turpin, Michael's widow and the beneficiary of his \$50,000 life insurance policy. The death penalty was sought against all three. Bouchard entered a guilty plea and agreed to testify against Brown and Turpin, who were tried together. Each of the women was found guilty of murder and

received a sentence of life without the possibility of parole for twenty-five years.

Turpin's conviction was affirmed by the Kentucky Supreme Court on November 30, 1989. See Turpin v. Commonwealth, 780 S.W.2d 619 (Ky. 1989). She unsuccessfully sought habeas corpus relief in the federal court system. See Turpin v. Kassulke, 26 F.3d 1392 (6th Cir. 1994). Turpin filed her motion pursuant to RCr 11.42 on September 30, 1997. In 2002 this Court affirmed the Fayette Circuit Court's denial of relief, but the Kentucky Supreme Court subsequently reversed and remanded to the trial court for an evidentiary hearing pursuant to the standards enunciated in Fraser v. Commonwealth, 59 S.W.3d 448 (Ky. 2001), and Norton v. Commonwealth, 63 S.W.3d 175 (Ky. 2002). The Fayette Circuit Court held the evidentiary hearing on January 22 and 23, 2003.¹ Turpin was again denied relief² on November 26, 2003, and she appeals. We affirm.

Turpin first argues that the trial court "failed to utilize the proper standards in assessing claims of ineffective assistance of counsel." In presenting this argument, Turpin alludes to the trial court's and this Court's earlier reliance

¹ By the time the hearing was held, more than seventeen years had elapsed since the murder of Michael Turpin. One of Turpin's trial attorneys was deceased, and other witnesses at the hearing acknowledged imperfect memory.

² We note that co-defendant Brown was granted post-conviction relief by the Fayette Circuit Court on November 25, 2003. The Commonwealth has appealed, and Brown has cross-appealed, from that order in case Numbers 2003-CA-2624 and 2003-CA-2714, respectively. Those appeals are being considered by a separate panel of this Court.

on the now overturned criterion enunciated in Robbins v. Commonwealth, 719 S.W.2d 742 (Ky.App. 1986), overruled by Norton, supra. Robbins had held the RCr 11.42 movant to the higher standard of proving that, but for counsel's deficiencies, the evidence would have compelled an acquittal. However, when the Supreme Court remanded this matter for an evidentiary hearing pursuant to Fraser and Norton, the trial court was put on notice to avoid the Robbins standard. And there is nothing in the post-evidentiary hearing ruling to indicate that Robbins was instrumental in the trial court's decision to deny once again Turpin's requested relief. Turpin's first argument must fail.

Turpin next claims that counsel was ineffective for failing to object to inadmissible evidence. In this vein, Turpin refers to unchallenged witness testimony that she was, among other things, cold and calculating, more inconvenienced than concerned, a leader rather than a follower, and (by her ex-mother-in-law) that she had killed Michael Turpin; appellant continues that other inadmissible evidence included testimony that she used drugs, engaged in extra-marital sex, and would have performed a coat hanger abortion had she become pregnant by her husband. Without considering each instance individually, we uphold our earlier opinion wherein we stated that "many, if not most, would not be considered inadmissible evidence."

Furthermore, Turpin could or should have brought the majority of these issues to the attention of our Supreme Court on direct appeal. Bronston v. Commonwealth, 481 S.W.2d 666 (Ky. 1972).

Even were we to consider these allegations as actual errors by trial counsel, we are nonetheless obligated to determine whether they affected the outcome of the proceedings. Strickland v. Washington, 466 U.S. 668 (1984); accord Gall v. Commonwealth, 702 S.W.2d 37 (Ky. 1985). See also Hodge v. Commonwealth, 116 S.W.3d 463, 470 (Ky. 2003); and Norton, supra. Turpin's defense was one of complete denial of involvement in the scheme to murder her husband, with the focus on the lack of physical evidence tying her to the case. She fails to convince us of the reasonable probability that the absence of these alleged errors would have resulted in her acquittal or conviction of a lesser included charge. Trial counsel credibly claimed at the evidentiary hearing that the lack of objections were the result of either strategic decisions on the part of the defense team or singly of his late associate during the trial. His further explanation about the decision not to join co-defendant Brown's request for an admonition regarding pretrial custody was satisfactory as well. Turpin fails to meet her burden under Strickland and its progeny.

We are lastly asked to consider Turpin's dissatisfaction with her representation during the penalty

phase. She specifically criticizes the deficient investigation into and presentation of mitigation evidence. Again, we defer to the trial court's acceptance of counsel's explanation regarding the joint decision not to present further testimony during the penalty phase.

The judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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