

RENDERED: MARCH 24, 2006; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001926-MR

CEDRIC W. O'NEAL

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE DENISE CLAYTON, JUDGE
ACTION NO. 97-CR-002403

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: McANULTY, SCHRODER, AND VANMETER, JUDGES.

VANMETER, JUDGE: Cedric W. O'Neal appeals pro se from an order entered by the Jefferson Circuit Court denying his motion seeking RCr 11.42 relief. For the reasons stated hereafter, we affirm.

O'Neal was convicted by a jury of first-degree robbery and wanton murder, and he was sentenced to life imprisonment. The Kentucky Supreme Court affirmed the trial court's judgment in an unpublished opinion which became final on June 8, 2000.

More than three years later, in July 2003, O'Neal submitted to the circuit court the underlying motion seeking RCr 11.42 relief based on allegations of ineffective assistance of counsel. Our review of the motion shows that it was aptly described by the trial court as follows:

Mr. O'Neal's 11.42 motion not only lacks the sufficient specificity of its allegations, it also lacks the facts and evidence needed to substantiate a particular claim. The 11.42 motion has two main argument sections wherein O'Neal attempts to argue ineffective assistance of counsel. He provides ample case law in his motion, but his actual allegations are so bare-boned and lacking of factual support and specificity that they cannot be successful. He simply states, "Counsel was deficient in his performance prior to trial as follows: 1) No Investigation, 2) Failed to confer with defendant, 3) Failed to challenge juvenile waiver, 4) Failed to challenge statement, 5) Failed to consider trial strategy." Next, O'Neal claims that, "Counsel was deficient in his performance at [trial] as follows: 1) During Voir Dire, 2) Opening Statement, 3) Presentation of Evidence, 4) Witness Credibility, 5) Closing Argument, 6) Jury Instructions."

That is the extent of any reference to the actual events at issue. The rest of Mr. O'Neal's motion is comprised of case law. There is absolutely no factual support provided for the allegations - he has merely provided two lists that are as vague as can be. As such, his motion fails the proof and specificity requirements mentioned earlier. Furthermore, because he has not proved deficiency or prejudice (or even really addressed those issues), Mr. O'Neal's motion must also fail the *Strickland* test for ineffective assistance of counsel.

The court denied O'Neal's motion seeking relief, and this appeal followed.

We must affirm the trial court's order for several reasons. First, although not addressed by either the trial court or the Commonwealth, it appears that O'Neal's July 2003 motion seeking RCr 11.42 relief was untimely, as it was filed more than three years¹ after the June 2000 finality date of the Kentucky Supreme Court's opinion affirming the trial court's judgment against him.

Second, O'Neal states on appeal that "[t]he issue presented . . . is whether the State of Kentucky is protecting the right of indigent prisoners to access to the courts by providing them with law libraries or alternative sources of legal knowledge." However, regardless of whether this issue could be raised successfully in another type of proceeding, it clearly is not properly raised for the first time in this appeal from the denial of his motion seeking RCr 11.42 relief.

Finally, although O'Neal makes some attempt on appeal to flesh out the bare-bones issues which were raised below, the fact remains that a motion seeking RCr 11.42 relief must set

¹ See RCr 11.42(10).

forth all the facts which are necessary to establish the basis for relief.² O'Neal has failed to meet that burden.

The court's order is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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² RCr 11.42(2). See *Hodge v. Commonwealth*, 116 S.W.3d 463 (Ky. 2003).