

RENDERED: NOVEMBER 26, 2008; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2007-CA-001714-MR

MATTHEW ISERAL

APPELLANT

APPEAL FROM MCCREARY CIRCUIT COURT  
v. HONORABLE GREGORY A. LAY, JUDGE  
ACTION NO. 00-CR-00038

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CLAYTON, LAMBERT, AND WINE, JUDGES.

LAMBERT, JUDGE: Matthew Iseral appeals the McCreary Circuit Court's denial of his RCr 11.42 motion regarding his conviction for murder and rape in the first degree. After careful review, we affirm.

Matthew Iseral (hereinafter Matthew) was convicted of the murder and rape of Tina Day in 2001 and was eventually sentenced to fifty years

imprisonment in 2006, after the Supreme Court of Kentucky affirmed his conviction but remanded for a new penalty phase of the trial.

Matthew's trial consisted largely of testimony by Joey Spradlin, who was with Matthew, Matthew's father, Walter Iseral, and Matthew's cousin, Daniel Tapley, the night the rape and murder took place. Spradlin denied being involved in the rape or murder but allegedly saw the events unfold and saw the other men participate in the crimes. Spradlin did not come forward with the information until some time later and was a police informant at such time.

According to Spradlin, on July 28, 1999, Matthew Iseral called him and invited him to a party at his father's house, despite the house having recently burned. Spradlin said that he and the three other men arrived on Walter Iseral's porch sometime after midnight and that Tina Day and her boyfriend, Mike McDonald, were asleep in their car nearby. McDonald would not wake up, but the men managed to wake Tina, and she got out of the car and started talking to them. After a few minutes, Matthew began raping Tina, followed by his father, Walter, and Matthew's cousin, Daniel Tapley. At daylight, the men loaded Tina in Walter Iseral's truck and headed up to Gate Road. Once up the hill past the gate, Spradlin testified that Matthew raped Tina again, followed by his cousin, Daniel Tapley. Walter remained near the truck with Spradlin. Matthew then yelled to them that while he was having anal sex with Tina, she used the bathroom all over him.

Matthew then grabbed Tina and with his sawed off shotgun in hand, walked up the road and over a hill to where a shallow hole had been pre-dug.

Matthew told Tina to lay down in the grave and she did. Matthew then shot Tina in the face. The men then burned the sleeping bag Tina had been wrapped in and drove to Cave Creek Landing, where they dropped the gun into the water.

Spradlin denied having struck a deal with prosecutors in exchange for his testimony. His story was corroborated by several other witnesses' testimony, including Mike McDonald's and a forensic anthropologist's, who investigated Tina's death and found traces of the sleeping bag at the scene and found Tina's injuries to be consistent with a gun shot to the face. The Commonwealth also called a witness who found the gun at Cave Creek and another witness who loaned the shotgun to Matthew prior to the crime and never received it back.

Daniel Crabtree also testified for the Commonwealth. Crabtree was asked to take Matthew to authorities so he could turn himself in to the police. Crabtree testified that before turning himself in, Matthew made key admissions to him which corroborated parts of Joey Spradlin's testimony. Matthew told Crabtree that he slept with Tina and stated that Walter and Daniel did not kill her, but when asked if he killed her, Matthew said he did not want to talk about it. Matthew told Crabtree that Spradlin did not sleep with the victim nor had he killed her.

The defense presented testimony showing that Mike McDonald's house was closer to the gravesite than Walter Iseral's. The defense also presented testimony from a forest service officer who testified that the service does not normally lock gates, which contradicted Spradlin's testimony that the gate to Gate Road was locked and that Michael shot it open on the night of the murder.

The defense also presented testimony from Lisa Young, Daniel Crabtree's mother. This testimony was apparently intended to show the close relationship between her son and Joey Spradlin, casting doubt on Crabtree's prior testimony. Defense counsel also presented testimony from Ben Coffey, who loaned the gun to Matthew and never received it back. The defense also presented testimony from the McCreary County Jail deputy jailer regarding Matthew's behavior while in jail, and he called a hardware store employee familiar with the sale of firearms. The final witness for the defense was Daniel Tapley's mother. She claimed that her son was home with her the night the murder occurred.

During the penalty phase of the case, the defense presented a psychologist to discuss Matthew's mental capacity and his low IQ of 74. The defense also called Matthew's special education English teacher, a prior employer, and the deputy jailer who testified that Matthew had helped him during a jailbreak attempt.

On July 17, 2001, Matthew was convicted of murder and rape and sentenced to fifty years' imprisonment. On September 18, 2003, the Kentucky Supreme Court affirmed in part and reversed and remanded in part, ordering a new penalty phase. After much delay, the parties entered into a sentencing agreement under which Matthew was sentenced on May 3, 2006, to fifty years' imprisonment. On December 19, 2006, Matthew filed an RCr 11.42 motion alleging ineffective assistance of counsel. On August 9, 2007, the trial court entered a thorough order overruling Matthew's RCr 11.42 motion. This appeal followed.

We review the trial court's denial of an RCr 11.42 motion for an abuse of discretion. An RCr 11.42 motion is limited to the issues that were not and could not be raised on direct appeal. An issue raised and rejected on direct appeal may not be reconsidered in these proceedings by simply claiming that it amounts to ineffective assistance of counsel. *Haight v. Commonwealth*, 41 S.W.3d 436 (Ky. 2001), citing *Sanborn v. Commonwealth*, 975 S.W.2d 905 (Ky. 1998).

The standards which measure ineffective assistance of counsel have been set out in *Strickland v. Washington*, 466 U.S. 668 (1984). *Strickland* requires the court to first find that there was an error in counsel's performance. If the court so finds, the court must then find that the error was prejudicial to the defendant, meaning that there is reasonable probability that, but for counsel's error, the result of the proceeding would have been different. The trial court must determine whether the counsel's deficient performance renders the result of the trial unreliable or the proceedings fundamentally unfair so as to deprive a defendant of a substantive or procedural due process right.

In the instant case, the trial court wrote a lengthy order denying Matthew's RCr 11.42 motion for ineffective assistance of counsel, pointing to the record to counter each of his arguments. We do not find any error with the trial court's denial and accordingly affirm.

Specifically, Matthew argues that he was entitled to an evidentiary hearing and should have been appointed counsel regarding his motion. "An evidentiary hearing is not required when the issues presented may be fully

considered by resort to the record of the proceeding.” *Lawson v. Commonwealth*, 386 S.W.2d 734 (Ky. 1965). A review of the trial court’s order denying Matthew’s motion denotes that in this case, the issues presented could be fully considered with resort to the record and thus an evidentiary hearing was not proper, nor was it required.

Matthew then argues that he received ineffective assistance of counsel which warrants this court overturning his conviction or at the least, remanding it to the trial court for further consideration. Specifically, he alleges that his counsel erred by 1) not investigating and utilizing Frank Jones as a witness; 2) not utilizing ownership information concerning the shotgun that was found; and 3) not requesting a competency evaluation. None of these grounds have any merit.

The record reveals that Franklin Jones supposedly saw a person who he later determined was the victim (after seeing her on the news) being picked up in a car after she was allegedly killed. Defense counsel decided not to call Jones as a witness, which is fully within counsel’s discretion. *See Ramsey v. Commonwealth*, 399. S.W.2d 473, 475 (Ky. 1966). Furthermore, we do not see how the testimony Matthew alleges Franklin Jones would have provided would have changed the result of the proceedings. Substantial testimony implicated Matthew in the crime and one person’s recollection that they saw some girl getting into a truck would not negate that testimony. Furthermore, even assuming Franklin Jones’ testimony was believed, it would not have proved Matthew did not commit the crime at issue. Therefore, we agree with the trial court that counsel’s

decision not to use such testimony did not amount to ineffective assistance of counsel.

Matthew then argues that had the testimony regarding the tracking information for the shotgun been introduced, it would have shown that someone unrelated to the case bought the shotgun and thus that it could not have ever been in his or Ben Coffey's possession. We find this argument completely illogical. Assuming the information had been introduced, it would only have shown who initially purchased the gun. The tracking information would not have revealed who bought the gun after the initial purchase or who borrowed the gun and did not return it. Defense counsel's decision not to introduce such testimony does not amount to ineffective assistance of counsel and the trial court's finding does not amount to an abuse of discretion.

Regarding competency, we find counsel's actions in this regard to be completely reasonable. Counsel investigated Matthew's competency prior to trial and several witnesses were presented in the penalty phase who testified about his competency. Further, counsel requested the court to hire Dr. Pat McGregor to testify regarding his opinion that mental retardation should be based on more than IQ score and that background information would help determine adaptive behavior. The trial court denied this motion. However, counsel made reasonable efforts to investigate and present testimony about Matthew's competency and accordingly counsel's conduct does not amount to ineffective assistance.

Because the record can refute Matthew's claims in his RCr 11.42 motion, the trial court properly denied an evidentiary hearing. Because the record revealed that trial counsel strategically chose not to introduce evidence with little probative value, and investigated Matthew's competency, we do not find that Matthew received ineffective assistance of counsel and the trial court did not abuse its discretion in so finding. Accordingly, the judgment of the McCreary Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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