

Commonwealth Of Kentucky
Court of Appeals

NO. 2007-CA-002192-MR

MICHAEL JACKSON

APPELLANT

v. APPEAL FROM FULTON CIRCUIT COURT
HONORABLE THOMAS R. LEWIS, JUDGE
ACTION NO. 01-CR-00032

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: MOORE AND THOMPSON, JUDGES; HENRY,¹ SENIOR JUDGE.
HENRY, SENIOR JUDGE: Michael Jackson appeals from an order of the Fulton Circuit Court denying his motion for post-conviction relief pursuant to Kentucky Rules of Criminal Procedure (RCr) 11.42. Because the record of the trial proceedings is not included in the record on appeal, we are constrained to affirm

¹ Senior Judge Michael L. Henry sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(b) of the Kentucky Constitution and KRS 21.580.

the judgment of the trial court pursuant to *Commonwealth v. Thompson*, 697 S.W.2d 143 (Ky. 1985).

FACTUAL AND PROCEDURAL BACKGROUND

Jackson was convicted in the Fulton Circuit Court of murder and first-degree wanton endangerment. Jackson shot and killed the victim after he had been told that the victim raped his 13 year-old sister. The wanton endangerment conviction was based upon Jackson having pointed the murder weapon at the victim's girlfriend following the shooting.

Jackson was originally sentenced to life without parole for twenty-five years on the murder conviction and one year imprisonment on the wanton endangerment conviction, to run consecutively. On direct appeal the Supreme Court vacated Jackson's sentence because of an erroneous jury instruction and remanded for a new sentencing phase. *See Jackson v. Commonwealth*, 2003 WL 22415621 (Ky. October 23, 2003). Upon remand and retrial of the sentencing phase, Jackson was sentenced to forty-eight years imprisonment. On appeal, his resentencing was affirmed by the Supreme Court. *See Jackson v. Commonwealth*, 2005 WL 3131591 (Ky. November 23, 2005).

On June 4, 2007, Jackson filed a motion for post-conviction relief pursuant to RCr 11.42. On September 10, 2007, the trial court entered an order denying Jackson's motion. This appeal followed.

DISCUSSION

Before us Jackson contends that (1) the trial court abused its discretion by summarily denying his request for post-conviction relief without appointing post-conviction counsel and without conducting an evidentiary hearing; (2) that the trial court erred at trial by failing to instruct the jury “in a manner consistent with the presumption of guilt or innocence and burden of proof”; and (3) that he was deprived of his right to effective assistance of counsel “when both of his trial defense attorney’s [sic] proceeded in this capital case without the aide of co-counsel[.]”

The record of the trial proceedings is not contained in the record on appeal but, rather, the record before us commences with the filing of the present RCr 11.42 motion. It is an appellant's duty to see that the record is complete on appeal. *Commonwealth, Dept. of Highways v. Richardson*, 424 S.W.2d 601, 603 (Ky. 1968). “It is also reasonable to place upon appellant the duty to designate and file a record sufficient to enable the court to pass on the alleged errors.” *Burberry v. Bridges*, 427 S.W.2d 583, 585 (Ky. 1968). “[W]e have consistently and repeatedly held that it is an appellant's responsibility to ensure that the record contains all of the materials necessary for an appellate court to rule upon all the issues raised.” *Clark v. Commonwealth*, 223 S.W.3d 90, 102 (Ky. 2007). When the complete record is not before the appellate court, we are bound to assume that the omitted record supports the decision of the trial court. *Commonwealth v. Thompson*, 697 S.W.2d 143, 145 (Ky. 1985). We will not “engage in gratuitous speculation ... based upon a silent record.” *Id*

Without the trial record, we are unable to assess the arguments raised by Jackson in this appeal. We accordingly are constrained to affirm the judgment of the trial court.

CONCLUSION

For the foregoing reasons the judgment of the Fulton Circuit Court is affirmed.

ALL CONCUR.

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BRIEF FOR APPELLEE:

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