

RENDERED: AUGUST 9, 2013; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2011-CA-002248-MR

MICHAEL MCQUEEN

APPELLANT

v.

APPEAL FROM LAUREL CIRCUIT COURT  
HONORABLE JOHN KNOX MILLS, JUDGE  
ACTION NO. 08-CR-00260

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DIXON, MOORE, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Michael McQueen brings this *pro se* appeal from a November 23, 2011, Order of the Laurel Circuit Court denying his Kentucky Rules of Criminal Procedure (RCr) 11.42 motion to vacate sentence without an evidentiary hearing. We affirm.

In 2010, appellant was found guilty by a jury of the intentional murder of Christina Hodge. The evidence at trial demonstrated that appellant shot Hodge in the back of her head at point blank range. Per the jury's recommendation, appellant was sentenced to thirty-two-years' imprisonment. Appellant pursued a direct appeal to the Kentucky Supreme Court. In *McQueen v. Commonwealth*, 339 S.W.3d 441 (Ky. 2011), the Supreme Court affirmed the circuit court judgment and the sentence of thirty-two-years' imprisonment.

Appellant then filed the instant RCr 11.42 motion to vacate. He alleged that trial counsel rendered ineffective assistance during trial, thus entitling him to RCr 11.42 relief. By Order entered November 23, 2011, the circuit court denied appellant's RCr 11.42 motion without conducting an evidentiary hearing. This appeal follows.

Appellant contends that his trial counsel rendered ineffective assistance during trial. In particular, appellant alleges that Laurel County Sheriff's Department lead investigator, Detective Tommy Johnston, was biased and harbored a "conflict" because appellant had an affair with the Detective's wife some ten years before. Appellant maintains that trial counsel was ineffective for failing to investigate Detective Johnston's bias and for failing to raise such issue at trial. Also, appellant asserts the circuit court erroneously failed to hold an evidentiary hearing upon his RCr 11.42 motion.

To prevail, appellant must demonstrate that trial counsel's performance was deficient and that such deficient performance resulted in actual

prejudice. See *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). And, to be entitled to an evidentiary hearing, the RCr 11.42 motion must raise issues of fact that cannot be adequately resolved upon the face of the record. *Hodge v. Commonwealth*, 68 S.W.3d 338 (Ky. 2001).

In this case, appellant failed to demonstrate any actual bias on the part of Detective Johnston and also failed to demonstrate deficient performance of trial counsel. As perceptively observed by the circuit court, appellant failed:

[T]o demonstrate any bias that manifested itself in Johnston's investigation of the case or in his testimony before the jury. Instead, the motion is premised on speculation that there *may* have been some potential bias against [appellant], without specifically identifying any actual bias. For example, [appellant] states, "there is at least a reasonable probability that but for Defense counsel's failure to cross-examine Johnston and reveal to the jury his potential bias, thereby creating reasonable doubt, the result would have been different." Motion, pp. 2, 4.

.....

[Appellant] has failed to demonstrate with specificity how he was prejudiced by either the investigation of testimony of Detective Johnston. He has not identified any testimony given at trial, or any part of the investigation, that was anomalous due to Detective Johnston's involvement. Movant has only speculated that a possibility for bias existed and has not demonstrated with specificity how that bias was reflected in the actions of Detective Johnston, the witness at the focus of this prejudice inquiry. Because [appellant] only asserts that the result of the trial might have been different had the potential bias been explored, no grounds exist for RCr 11.42 relief to be granted.

We agree with the circuit court's analysis and conclude that appellant did not demonstrate that trial counsel's performance was deficient during trial.

Consequently, as appellant's claims were refuted upon the face of the record, he was not entitled to an evidentiary hearing.

In sum, we conclude that the circuit court properly denied appellant's RCr 11.42 motion without an evidentiary hearing.

For the foregoing reasons, the Order of the Laurel Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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