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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-001640-MR

BLAKE HADDIX

APPELLANT

v. APPEAL FROM BREATHITT CIRCUIT COURT
HONORABLE FRANK ALLEN FLETCHER, JUDGE
ACTION NO. 03-CR-00139

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, CHIEF JUDGE; COMBS AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Blake Haddix appeals a judgment of the Breathitt Circuit Court denying his request for relief made pursuant to Kentucky Rules of Criminal Procedure (RCr) 11.42. Haddix claims his trial counsel was ineffective because he failed to present testimony regarding the victim's propensity for violence. For the reasons stated, Haddix has failed to establish the requisite elements of an

ineffective assistance of counsel claim, and the decision of the circuit court is affirmed.

In 2006, Haddix was convicted of murder and second-degree assault and received a forty-year prison sentence. On direct appeal, the Supreme Court of Kentucky detailed the facts leading to his conviction:

On the evening of September 5, 2003, Estill Mullins and his father, Woodrow Mullins, were sitting on Estill's front porch in Breathitt County. Appellant Haddix, who had known Estill and Woodrow for some time, arrived on a four-wheeler to visit with them. As they talked, the three men drank beer. After Woodrow came inside, Estill's wife, Gladys, went to the door and called Estill inside. As Estill was closing the front door behind him, he was struck by a bullet that came through the window of the front door. Estill fell to the floor, bleeding from a wound to the head.

Having heard the shot, Gladys headed for the back door so that she could leave and call the police. As the Mullins's home had no phone, Gladys intended to drive a short distance to her sister's house. Gladys heard two more shots as she drove away.

As Gladys was leaving, Woodrow grabbed a .410 gauge shotgun and went outside to confront Haddix. Haddix shot Woodrow twice, with one round traveling from the chest to the neck and the other round entering the abdomen.

Officers arrived to find Woodrow lying dead on the front porch and Estill lying in the hallway bleeding from a head wound. Officers also discovered Haddix lying in the driveway. Haddix appeared to be very intoxicated and had one hand near the grip of a revolver sticking out of a pocket. Haddix was taken into custody and a .32 caliber revolver was recovered.

Officers also recovered the .410 gauge shotgun that was found lying near Woodrow's body. The shotgun had one live round in the chamber. Testimony at the preliminary hearing indicated no spent shotgun shells were recovered from the scene. Further, while officers were unable to recover the round that struck Estill, they did recover both rounds that struck Woodrow. Ballistics tests indicated both rounds that struck Woodrow were fired from the .32 caliber revolver recovered from Haddix.

At trial, Haddix confirmed that he drove to the Mullins's residence on a four-wheeler, and that the men sat outside drinking beer. However, Haddix claimed that the men argued over a timber cutting contract. While Haddix denied shooting Estill, he claimed he shot Woodrow in self-defense. Haddix testified that Woodrow came out of the house with a shotgun and fired it. As Woodrow was reloading, Haddix warned him not to continue. When Woodrow aimed the shotgun at him, Haddix shot Woodrow.

Haddix v. Com., 2008 WL 3890352 (Ky. 2008). The Kentucky Supreme Court remanded for an evidentiary hearing on a single issue, but ultimately affirmed the conviction on the second appeal.

On May 6, 2010, Haddix filed a *pro se* RCr 11.42 motion. The trial court denied the motion on May 27, 2010. Haddix appealed to this court. On December 27, 2010, Haddix filed a Kentucky Rules of Civil Procedure (CR) 60.02 motion and a CR 59.01 motion. On January 11, 2011, the trial court denied the motions and Haddix appealed. Haddix's two appeals were consolidated. On January 27, 2012, this Court rendered an opinion affirming in part and reversing and remanding on a single issue (2010-CA-001190-MR and 2011-CA-000191-MR). On remand the circuit court was instructed to conduct an evidentiary hearing

to determine if Haddix's trial counsel was ineffective because he failed to call witnesses to testify regarding Woodrow's propensity for violence. Haddix claims this evidence was critical to his self defense claim.

The circuit court conducted a hearing on July 19, 2012. Numerous witnesses were called to testify regarding their knowledge of Woodrow's character and propensity for violence. The majority of the testimony regarding Woodrow indicated that they had knowledge of his violent propensities from forty years prior, when Woodrow was a younger man. At the time of his death, Woodrow was eighty-six years old, approximately five feet and three inches tall, and weighed 103 pounds. It is noteworthy to mention that Haddix did not seek the testimony of his trial counsel. The circuit court, in an order entered August 27, 2012, ruled that the testimony presented at the hearing did not establish the requisite elements of ineffective assistance of counsel. We agree.

In a motion brought pursuant to RCr 11.42, "[t]he movant has the burden of establishing convincingly that he or she was deprived of some substantial right which would justify the extraordinary relief provided by [a] post-conviction proceeding." *Simmons v. Com.* 191 S.W.3d 557, 561 (Ky. 2006), *overruled on other grounds by Leonard v. Com.*, 279 S.W.3d 151, 159 (Ky. 2009). "In reviewing a claim of ineffective assistance, the court must focus on the totality of the evidence before the judge or jury and assess the overall performance of counsel throughout the case in order to determine whether the identified acts or

omissions overcome *the presumption that counsel rendered reasonable professional assistance.*” *Id.* (Emphasis added).

In this case, Haddix must establish that his trial counsel’s failure to call the witnesses presented at the hearing fell outside the wide range of professionally competent assistance, and, had the testimony been presented, the result of the trial would have been different. *See Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

As mentioned above, Haddix bears the burden of proof in this proceeding. Despite this burden, Haddix presented no testimony regarding his trial counsel’s strategy. When this court remanded for a hearing, it was for the express purpose of determining trial counsel’s strategy. Specifically, we instructed that the record was silent as to why the attorney did not present evidence regarding Woodrow’s propensity for violence and noted, “[t]here are several possible explanations: perhaps the attorney felt disparaging the decedent would backfire and turn the jury against Haddix. Perhaps the witnesses Haddix wished to call could present only inadmissible testimony or were not credible. On the other hand, it is possible that the trial attorney simply neglected to investigate this matter thoroughly or was mistaken about the law governing such evidence, and therefore his performance was deficient.” *Haddix v. Com.*, Appeal No. 2010-CA-001190-ME and 2011-CA-00191-MR. This inquiry is in keeping with the analysis set forth in *Strickland*, where the United States Supreme Court instructed “that a particular decision not to investigate must be directly assessed for reasonableness

in all the circumstances, applying a heavy measure of deference to the counsel's judgment." *Strickland*, 466 U.S. at 691.

Based on the testimony presented during the hearing, we cannot determine the trial strategy utilized by Haddix's trial counsel at trial was deficient. As a result, Haddix failed to overcome the presumption of reasonableness of the professional assistance by counsel at trial. *Com. v. Pelfrey*, 998 S.W.2d 460 (Ky. 1999). Additionally, we must note that Haddix's brief on appeal fails to articulate how the evidence regarding the victim, if presented at trial, would have affected the outcome. Given the age and frail condition of the victim, coupled with the strong case presented against Haddix, makes it highly unlikely that the outcome of the trial would have been different if the testimony regarding the victim's alleged propensity for violence was presented. This is especially true when one considers that Haddix testified at trial as to his version of the facts and the jury chose not to believe him. Accordingly, Haddix has failed to meet his burden of establishing that counsel was deficient at trial.

For the foregoing reasons, the judgment of the Breathitt Circuit Court is affirmed.

ALL CONCUR.

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