

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2011-CA-001314-MR

JAMES EDWARDS

APPELLANT

v.

APPEAL FROM BARREN CIRCUIT COURT  
HONORABLE PHIL PATTON, JUDGE  
ACTION NO. 02-CR-00481

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CLAYTON, TAYLOR, AND VANMETER, JUDGES.

TAYLOR, JUDGE: James Edwards (Edwards) appeals an order of the Barren Circuit Court entered July 6, 2011, denying Edwards relief under Kentucky Rules of Criminal Procedure (RCr) 11.42. We affirm.

This case came before the Supreme Court of Kentucky on direct appeal in *Edwards v. Commonwealth*, 2004-SC-0649-MR (2005), and the Court summarized the underlying facts as follows:

The Barren County Grand Jury indicted appellant on November 13, 2002, on four charges. Counts 1 and 2 charged Appellant with the offense of first-degree sodomy in violation of KRS 510.070 by performing oral sex on A.M., who was less than twelve years old, and forcing A.M. to perform oral sex on Appellant. Counts 3 and 4 charged Appellant with first-degree sexual abuse for forcing A.M. to engage in sexual touching of Appellant and for Appellant's similar acts on A.M. in violation of KRS 510.110.

A.M.'s relationship with Appellant began at the age of about five or six, when her mother began to date him. Eventually, A.M., her mother, and half-sister moved in with Appellant before A.M.'s mother's marriage to him in the years following. At trial, A.M. testified that she was between the ages of nine and ten when Appellant began to sexually abuse her. She related that the abuse occurred over an extended period of time, usually when her mother was at work and her half-sister was away visiting relatives.

A.M. kept the knowledge of this abuse private for several years because, "[Appellant] told me if I ever told mom, I would never see her again." Only after A.M., her mother, and her half-sister moved out of Appellant's home in June 2002, did A.M., then age fourteen, relate her account of the alleged sexual abuse to a family friend. This friend later told A.M.'s mother, who reported the alleged abuse to authorities.

At trial, A.M., then sixteen years old, testified in some detail about several occasions when Appellant allegedly sexually abused her as a child. Her testimony included accounts of the types of abuse, the locations where the abuse happened, and conversations with Appellant regarding the abuse. In response to the allegations, Appellant testified on his own behalf at trial and claimed that A.M.'s testimony was fabricated as part of a scheme to ensure that her mother would get his land and home through their divorce proceedings. . . .

*Edwards v. Commonwealth*, 2004-SC-0649-MR (2005).

In addition to A.M.'s personal testimony, the testimony of Cindy Williams, a social worker who investigated the abuse on behalf of the Cabinet for Health and Family Services (Cabinet), was presented at trial along with a report prepared during the course of her investigation. Testimony was also offered from Julie Griffey, A.M.'s counselor, and Dr. Blakerbie (also spelled Blackerby in the record), both of whom met with A.M. regarding the abuse. In addition, testimony was offered by Scott Felipe (also spelled Phillipi in the record) who, along with Edwards, was a truck driver. Felipe testified that he met Edwards at a truck stop in Georgia about a month before Edwards' wife filed for divorce. Felipe indicated that Edwards claimed to have had sex with a thirteen-year-old girl and was almost caught by the child's mother sometime in 2002.

Ultimately, the jury found Edwards guilty upon the indicted charges, and the circuit court sentenced him to fifty years' imprisonment. Edwards filed a direct appeal to the Supreme Court of Kentucky, and the Supreme Court ultimately affirmed Edwards' conviction in *Edwards v. Commonwealth*, 2004-SC-0649-MR.

On December 8, 2005, Edwards then filed a *pro se* RCr 11.42 motion alleging ineffective assistance of counsel. Along with his RCr 11.42 motion, Edwards sought the appointment of counsel. The circuit court granted his request and appointed the Department of Public Advocacy (DPA). The circuit court held an evidentiary hearing upon some of the issues raised in the RCr 11.42 motion. At the hearing, Edwards' trial counsel indicated that his trial strategy centered around inconsistent reports made by A.M. to various individuals. By highlighting those

inconsistencies, the defense offered a theory that A.M. fabricated the allegations in an attempt to have the court disfavor Edwards during his divorce proceedings.

The circuit court ultimately denied Edwards' RCr 11.42 motion and determined that he did not receive ineffective assistance of trial counsel or appellate counsel. In support thereof, the circuit court indicated that Edwards' trial counsel engaged in sound trial strategy and that appellate counsel was not required to raise every possible argument on appeal. This appeal follows.

Edwards contends that the circuit court erred by denying his RCr 11.42 motion as he received ineffective assistance of trial counsel and appellate counsel. We shall initially address Edwards' claims as to his trial counsel and then appellate counsel.

To prevail upon an ineffective assistance of trial counsel claim, a defendant must demonstrate that trial counsel rendered deficient performance and that such deficiency was prejudicial. *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Stated differently, defendant must demonstrate that counsel's performance fell "outside the wide range of professionally competent assistance," and must prejudice the defendant to such an extent that, "but for the counsel's unprofessional errors, the result of the proceeding would have been different." *Id.*, 466 U.S. at 690-94, 104 S. Ct. at 2066-2068.

Edwards specifically argues that trial counsel was ineffective for failing to object to certain testimony at trial. He maintains that Williams, a social

worker for the Cabinet, improperly testified that she had substantiated A.M.'s allegations of abuse. Additionally, Edwards believes that trial counsel was ineffective for failing to object to the testimony of Julie Griffey, who testified that A.M. manifested symptoms not shown by an individual who has falsified a claim of sexual abuse. Edwards maintains that Williams' and Griffey's testimonies were inadmissible as invading the province of the jury and improperly bolstering the credibility of A.M.

Edwards also contends that trial counsel was ineffective for failing to object to the testimony of: (1) Dr. Blackerby, who repeated A.M.'s statement identifying Edwards as the perpetrator, (2) Griffey, who read her case notes which contained statements by A.M. and, (3) Detective Steve Fitts, who testified as to his interview of A.M. Edwards asserts that the above testimony constituted hearsay evidence, and trial counsel should have objected to its admission.

Edwards, likewise, maintains that trial counsel was ineffective for failing to object to the testimony of Scott Felipe. As noted, Felipe testified that sometime in 2002, Edwards told Felipe that he had sex with a thirteen-year-old girl and was almost caught by her mother. Edwards argues this testimony was inadmissible under Kentucky Rules of Evidence 404(b), and trial counsel was ineffective for failing to object to same.

During trial, A.M. provided direct testimony and detailed accounts of the sexual abuse perpetrated by Edwards. In his RCr 11.42 motion, Edwards has not raised any arguments or challenged the admissibility of A.M.'s testimony.

This testimony alone was sufficient to convict Edwards, regardless of the other witnesses' testimony. Despite trial counsel's attempts to discount A.M.'s testimony by pointing to inconsistencies in her reports to social workers, counselors, and doctors, the jury simply chose to believe A.M. Pointing to inconsistencies in the witnesses' testimony was not only sound trial strategy, but also the only reasonable defense against A.M.'s first-hand accounts of Edwards' sexual abuse.

And, even if trial counsel were deficient for failing to object to the other witnesses' testimony at trial, there does not exist a reasonable probability that the outcome of the trial would have been different absent admission of the above evidence. *See Strickland*, 466 U.S. at 688, 104 S. Ct. at 2064-65. Edwards is simply unable to demonstrate prejudice. Thus, we conclude that the circuit court properly denied Edwards' RCr 11.42 motion alleging ineffective assistance of trial counsel.

Edwards next contends that the circuit court erred by denying his RCr 11.42 motion claiming ineffective assistance of appellate counsel during his direct appeal. Edwards specifically argues that appellate counsel failed to raise meritorious issues on direct appeal. Edwards points to the alleged inadmissible testimony of Williams, Griffey, Dr. Blackerby, and Felipe. Edwards believes appellate counsel was ineffective for failing to raise these evidentiary issues on appeal.

To prevail upon an ineffective assistance of appellate counsel claim, defendant must demonstrate that the failure to raise an issue on appeal was deficient and that such deficiency resulted in prejudice; there is a reasonable probability that the appeal would have succeeded. *Hollon v. Commonwealth*, 334 S.W.3d 431 (Ky. 2010).

When evidentiary issues are raised on direct appeal, an appellate court initially determines whether the circuit court abused its discretion in admitting or excluding the evidence, and then if so, whether such admission or exclusion constituted reversible error; i.e., whether the outcome of the proceedings would have been different absent the error.

In this case, even if appellate counsel had been deficient in failing to raise the above evidentiary issues on appeal, we do not believe that Edwards has demonstrated prejudice. Again, we emphasize that A.M. testified at trial concerning the sexual abuse she suffered by Edwards, and A.M.'s testimony was compelling. We simply do not believe that the erroneous admission of the above evidence constituted reversible or prejudicial error. Thus, the failure of appellate counsel to raise the above evidentiary issues on direct appeal was not prejudicial.

In sum, we conclude that the circuit court properly denied Edwards' RCr 11.42 motion alleging ineffective assistance of trial counsel and appellate counsel. We view any remaining contentions of error as moot or without merit.

For the foregoing reasons, the order of the Barren Circuit Court is affirmed.

ALL CONCUR.

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