

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-000164-MR

H.V.¹

APPELLANT

v.

APPEAL FROM BREATHITT CIRCUIT COURT
HONORABLE LARRY MILLER, JUDGE
ACTION NO. 99-CR-00046

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, KELLER AND MOORE, JUDGES.

MOORE, JUDGE: H.V. appeals the denial by the Breathitt Circuit Court of his motion for post-conviction relief pursuant to CR² 60.02 and RCr³ 11.42. Upon review, we affirm.

¹ The Appellant's initials are being used to protect the names of the minor children involved.

² Kentucky Rule of Civil Procedure.

³ Kentucky Rule of Criminal Procedure.

FACTUAL AND PROCEDURAL BACKGROUND

On October 2, 2000, H.V. was found guilty on the charge of Rape First Degree for which a sentence of fifty years was imposed. He appealed his conviction to the Kentucky Supreme Court, which by Memorandum Opinion, affirmed.

His conviction was based on allegations by his then eight-year-old daughter, K.V.,⁴ and twelve-year-old son, E.V., that H.V. had raped K.V. on August 27, 1999. According to statements E.V. gave to social worker Julie Sandlin and Kentucky State Trooper Kevin Hurt on the night of the incident, as well as E.V.'s trial testimony, his mother B.V. was not at home.⁵ H.V. called K.V. into the bedroom, where he began raping K.V. Upon hearing K.V. crying and asking H.V. to stop, E.V. then kicked open the bedroom door. He saw H.V. on top of K.V. with his pants down and with K.V. in the nude.

E.V. ran out of the trailer home to P.V.'s house, who lived a short distance away. P.V. is the half sister to E.V. and K.V.⁶ According to those interviewing E.V., as well as P.V.'s testimony at the post-conviction hearing, E.V. was upset and had been crying. P.V. testified that E.V. was initially so distraught and crying that she could not get him to tell her what was wrong, but eventually told her that his father had raped his sister.

During H.V.'s trial, the trial transcript illustrates that K.V., who was eleven years old by that time, had difficulty testifying on the stand. Of course, she was in front of her father, a jury, a judge, the prosecutor and others in the room. During the initial

⁴ Due to the minor children involved, we use only the initials of the family members.

⁵ H.V. and B.V. are still married and have four children, including K.V. and E.V.

⁶ P.V. was an adult child of H.V.'s by another woman.

questioning of K.V., the prosecutor, Darrell Herald, asked general questions, unrelated to the incident. Then, when he asked what happened on the night in question, K.V. started crying. When asked if H.V. touched her, she responded “yes.” And, when asked if H.V. had taken off her clothes, she responded “yes.” Mr. Herald then asked if she understood what he meant when he asked about “private parts.” At this, K.V. stated she wanted her mommy and started crying even more, making it impossible for the court reporter to take down what she was saying. Consequently, Mr. Herald asked for a recess.

After the recess, K.V. continued testifying and was asked if she knew where her private parts were. She responded “yes.” When questioned in more detail, K.V. answered a few general questions, but started crying again when asked specifically where her private parts were. Thereafter, Mr. Herald asked K.V., “on that night, did your father put his private parts inside of your private parts on the front?” K.V. responded “no.” Mr. Herald then asked her to tell what had happened that night, to which K.V. started crying again to the level that it was not possible for the court reporter to take down K.V.’s testimony. K.V.’s mother interjected “can you tell them?” K.V. responded “I can’t tell them, Mommy.” Again, Mr. Herald asked K.V. what happened that night, but she cried again. When asked again, she stated that she “just want[ed] to leave.” Mr. Herald tried yet again to elicit a response, but K.V. stated that she just needed to leave. Her mother then stated to K.V., “it’s very important. You need to tell if anything happened to you.” K.V. stated that she just wanted to leave. B.V. replied to K.V. that she knew that it was embarrassing for K.V. to testify. K.V. then asked if she could go last.

Thereafter, a bench conference was held, wherein H.V.'s counsel, Bradley E. Wallace, argued that K.V. had answered the question "no" and should not have to continue to answer this line of questioning. To this, Mr. Herald argued that on the previous Friday, K.V. had answered to the contrary in his office and that K.V. just needed time to compose herself. The trial court agreed that K.V. needed time to compose herself and granted Mr. Herald's request that she go last.

E.V., who was thirteen years old at the time, was then called to testify. He testified that his father had called for K.V. to come into his bedroom. E.V. heard his sister crying so he went into the bathroom to listen to what was occurring in the bedroom. He testified that he wanted to listen so that he could tell his mother what had happened. He thereafter heard K.V. scream so he kicked open the bedroom door. He stated that he saw "him raping her" and "having sex with her." K.V. did not have any clothes on, and H.V. had his pants down. E.V. then testified that he "took hold of [K.V.] and that [H.V.] chased him." E.V. apparently ran out of the trailer and fell over the guardrail. E.V. testified that he had a scar from where he fell.

E.V. ran to the house of his half sister, P.V., who lived a short distance away. He testified that he told P.V. what happened and that they called the police.

On cross-examination, E.V. admitted that he did not get along well with his father and that evening he and his father had an argument over football. He testified that his father wanted him to play football, but his mother did not. E.V. also testified that he and his father fought "all the time." He denied that he was trying to get back at his father by testifying as he did.

P.V. testified next. She stated that E.V. came to her house on the evening in question “half-rattled, crying.” P.V. testified that E.V. cried so hard that he physically became ill, vomited, and that it took her a long time to settle him. When P.V. finally settled him down, he told her that he had caught H.V. “fooling with [K.V.]” P.V. thereafter called the police to report the incident.

Kentucky State Trooper Kevin Hurt then testified that dispatch received the telephone call, and he responded to it. Trooper Hurt contacted social services to respond to the complaint. Social worker Julie Sandlin came to P.V.’s home. Trooper Hurt went to H.V.’s residence several times that night, but no one was home.

Thereafter, K.V. was again called to the stand to continue her direct examination by Mr. Herald. When asked again if H.V. had put his private parts in hers, she testified “yes.” She stated that she had been nervous earlier when she answered “no.” K.V. then went into the details of the incident. She testified that she was in her parents’ bedroom and was on the bed with her father on top of her. She told him to stop. She was afraid and in pain. She recalled E.V. kicking open the door and then running away. She thereafter testified that her father had told her to tell that E.V. “was mad over the football game.”

On cross-examination, K.V. was asked why she earlier answered “no” when asked if H.V. had put his private parts in hers. She again responded that she was nervous and upset. She denied being afraid that she would not see her family again or that during the recess she had spoken to anyone about the answer to that question. She testified that a doctor examined her the day after the incident.⁷ There was no further testimony regarding the medical examination.

⁷ K.V. was not examined the evening of the incident because the police could not find the family.

After K.V.'s testimony, Mr. Herald determined that it was not necessary to call additional witnesses and rested. A bench conference was then requested by Mr. Wallace who complained that the Commonwealth had rested without presenting any medical evidence as to the rape. Mr. Wallace alluded to a finding that there was no medical evidence of penetration and with K.V.'s contradictory testimony on the stand as to whether the rape occurred. Mr. Wallace requested a directed verdict.

To this, Mr. Herald responded that medical testimony was not required for a rape conviction and that the doctor who examined K.V. was not available to testify during the trial. The trial court then denied the directed verdict and the trial proceeded.

Mr. Wallace called B.V., H.V.'s wife and the mother of E.V. and K.V., to testify on behalf of his client. B.V. testified that she returned home at around 10:30 p.m. after work and found that E.V. was not at home. The children reported to her that E.V. and H.V. had gotten into a fight because H.V. told E.V. he could not play football because he could not afford it. The children reported that E.V. went to P.V.'s house after the fight. E.V. spent the night at P.V.'s house. According to B.V., this was not unusual. During the night of the incident, K.V. did not mention to her mother anything about the evening other than that E.V. and H.V. had gotten into a fight over football. According to B.V., K.V. was around H.V. that evening and acted like nothing happened.

The next morning, B.V. went to get E.V. at P.V.'s. E.V. asked his mother if social services had been there to get the children yet, but she did not know what he was talking about. B.V. went back to her house and first questioned K.V. in front of H.V. regarding the incident. K.V. stated to her that "Daddy doesn't bother me."

On cross-examination, B.V. admitted that she had told Kentucky State Detective Darrell Tolson that she had expected that K.V. would have denied that H.V. raped her when she first asked K.V. about it in front of H.V. at their home. B.V. also told Detective Tolson, however, that when she was alone with K.V. on the way to P.V.'s home, K.V. told her the truth. Specifically, she said, "[E.V.] told me that your dad did things to you" and that K.V. replied "Well, what he told is what he did to me." B.V. testified that she asked K.V. again if it was true, and K.V. said it was. The police and social services were then called. The children were questioned by social services, and the girls were taken into custody on August 22, 2000.⁸

H.V. then took the stand in his defense. He testified that K.V. was examined by two physicians at Hazard Hospital and that he had seen the reports. The reports, however, were not introduced by either side at the trial. H.V. did not testify regarding the reports.

Thereafter, the case was submitted to the jury. The jury found H.V. guilty of rape in the first degree on October 2, 2000, and he was later sentenced to fifty years on the conviction in accordance with the jury's recommendation. H.V. appealed his conviction to the Kentucky Supreme Court, which affirmed in a Memorandum Opinion.

The girls remained in foster care until a year after H.V.'s trial. While in foster care, they were only allowed supervised visitation with their mother. One condition of the Cabinet's case plan was that the children were not to have contact with H.V. However, after B.V. regained custody of the children, she took them to see H.V. two to four times, and he spoke to the children on the telephone two to three times.

⁸ K.V. has a younger sister. Both were taken into protective custody by the Cabinet. Approximately one year after H.V.'s trial, B.V. regained custody of the girls. In total, K.V. spent three years in foster care.

The dates of the children's contact with H.V. were not established in the record. However, after contact, both K.V. and E.V. wrote letters recanting their trial testimony. H.V., acting *pro se*, filed a motion to vacate, set aside or correct sentence pursuant to RCr 11.42, CR 60.02(f) "and/or" CR 60.03. He argued that his judgment of conviction and sentence should be vacated because K.V. and E.V. had recanted their trial testimony. The trial court appointed the DPA to represent H.V.

The trial court held an evidentiary hearing on H.V.'s motion on July 27, 2006. E.V., nineteen years of age by this time, testified that he had lied at the trial and that P.V. had fabricated the story so that E.V. could get back at H.V. over an argument that E.V. and his father had gotten into because H.V. would not let E.V. go to a football game. E.V. stated that he talked to K.V. about this the morning after the incident. He testified that he believed that his father would only have to go to jail for a few years as a result of the allegations of rape.

E.V. also testified that during the trial, the prosecutor threatened him with a charge of perjury if he changed his story to say the rape had not occurred. He further stated that a deputy sheriff had put handcuffs on him during this time. He stated that he had made up the allegations and was coming forward at the evidentiary hearing because he had done something wrong and now wanted to make it right.

When crossed by the Commonwealth, E.V. said the disagreement he had with his father was only a "little disagreement" and that he and P.V. had come up with a solution to get rid of their father. He testified that he wrote the letter recanting his trial testimony at his father's attorney's office and that his mother was there when he wrote the letter.

On re-direct, E.V. testified that he had told his mother the truth before and after the trial. He testified that his mother had taken the children to see their father in prison, but that they never talked about the case.

B.V. also testified at the evidentiary hearing. Much of her testimony was inconsistent with what she had testified at trial. For example, she testified that K.V. never answered the prosecutor's question of whether or not H.V. raped K.V. and that H.V.'s attorney did not ask B.V. any questions, although in fact he did.

B.V. testified that during the trial, while the prosecutor was speaking to the children in a conference room, B.V. was not allowed to be present and heard the prosecutor "hollering" at K.V. B.V. also wrote a letter regarding the rape after visiting H.V. in prison.

Next, K.V. testified. She stated that during the trial, the prosecutor and social worker had "hollered" at her and told her she would never see her mother again. She testified that after meeting with her father's attorney, she signed an affidavit that she had lied at the trial.

In regard to the alleged fabrication of the rape story against her father, K.V. stated that P.V. had already called the police after E.V. ran to P.V.'s house to report the rape. K.V. did not go to P.V.'s house until the next day and after E.V. had told their mother about the rape. K.V. testified she was afraid that if she did not tell "them,"⁹ that her father raped her, she would be taken away from her mother. K.V. testified that after the trial she told her mother that H.V. had never touched her and that she did not tell her this before the trial.

⁹ It is not clear from the record to whom K.V. was referring to in this statement.

K.V. confirmed that her mother had taken her to see her father three to four times in prison. She denied having spoken about the case with him.

On cross-examination by the Commonwealth, K.V. testified that when the alleged rape occurred, she did not know what the term “rape” meant and would not have been able to have given details about a rape. She also admitted to the Commonwealth that she had spoken to her father a couple of times on the telephone while he was in prison.

The Commonwealth then called Mr. Herald, who prosecuted the case. He testified that he asked K.V. general questions on the witness stand at the trial, and she was fine. However, when he asked specifically about the rape, she changed totally. He stated that he never meets with children alone and that typically a social worker is present.

As to the lack of introduction of medical evidence, Mr. Herald stated that there is often a lack of medical evidence in a child sexual abuse case. Mr. Herald recalled that Trooper Hurt had spoken with P.V. and E.V. the night of the incident. E.V. had told Trooper Hurt that he had caught his father with his pants unzipped on the bed and that K.V. was crying for him to stop. Trooper Hurt informed Mr. Herald that E.V. ran to P.V.’s house, he was upset and pacing a lot.

Next, social worker Julie Sandlin was called to testify. She received a telephone call on the night of the incident in question around 10:00 p.m. She interviewed P.V. and E.V. separately. She testified that B.V. did know about the sexual abuse and that it had happened repeatedly. Due to her knowledge of the abuse, a finding of neglect was made against B.V. Because of this, all visits between B.V. and her daughters were

supervised while the girls were in foster care. The girls remained in foster care until a year after H.V.'s trial.

Ms. Sandlin testified that when she interviewed K.V., K.V. did know what rape meant. K.V. described "rape" as her father sticking his private parts in her vagina and butt.

As to the circumstances that led to E.V.'s being handcuffed during the trial, Ms. Sandlin testified that he was very upset, hitting and punching the walls.¹⁰ To control him, the bailiff put handcuffs on him. Ms. Sandlin testified that she was present, as well as a representative from child protective services during this time. She denied that E.V. was threatened in any way regarding his trial testimony.

Ms. Sandlin was also present when K.V. was taken into the conference room during the trial each time after she had broken down on the witness stand. Also present were a child advocate and a therapist, in addition to the prosecutor. She testified that no one was aggressive or mean toward K.V.

The Commonwealth then asked Ms. Sandlin if it was unusual for a child victim of abuse to recant. Defense counsel objected, arguing that the Kentucky Supreme Court had already addressed this theory and that it lacked scientific reliability pursuant to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L. Ed. 2d 469 (1993). The Commonwealth responded that the theory was only inadmissible before a jury and because the matter was being heard by the court, this testimony was allowable. The trial court opined that as a factfinder it would attach whatever weight it thought it should to the testimony.

¹⁰ This occurred outside the courtroom.

Ms. Sandlin continued, stating that 99 percent of children recant. Again, the defense objected, but the court did not rule on this objection, and the defense did not request a ruling. Ms. Sandlin continued, stating that if a child is taken around the family member who is the abuser, the child will recant.

On cross-examination by the defense, Ms. Sandlin testified that she interviewed the children separately and their stories were consistent. Then, the defense questioned her on the “child abuse accommodation syndrome.” On this, Ms. Sandlin remained firm that 99 percent of children will recant.

P.V. was then called to testify. She testified that E.V. came to her house on the night of the incident, and he was upset and crying. He told her what had happened at his house. She testified that E.V. had stated to her that he heard K.V. in the bedroom crying, that he kicked open the door, and that he saw H.V. on K.V. She stated that she never spoke to K.V. prior to the police and social services speaking to K.V. She did not see K.V. until the day after the incident when B.V. brought K.V. to her home.

In closing, the defense counsel stated that the question before the trial court was whether the testimony of the two key witnesses at the trial, K.V. and E.V., was reliable in light of the alleged fact that they felt pressured to testify against their father. Defense counsel requested a new trial on an actual innocence defense.

The first issue presented by H.V. on appeal is that the trial court abused its discretion when it allowed Ms. Sandlin to testify regarding her statement that 99 percent of child abuse victims will recant if taken around the abuser. Defense counsel objected, arguing that this testimony has been rejected by Kentucky courts and would not meet the

Daubert standard. The court overruled the objection, stating as the factfinder, it would attach whatever weight it deemed proper to the evidence.

We review *Daubert* objections to the admission of testimony under an abuse of discretion standard. *Baraka v. Com.*, 194 S.W.3d 313, 314 (Ky. 2006). We note that the Commonwealth did not qualify Ms. Sandlin as an expert to give opinion on her statistics, nor did the defense question her qualifications to do so.

Regarding the trial court's opinion in this matter, it is well-reasoned and thorough. Yet, there is no citation to Ms. Sandlin's testimony about her recantation statistics or the child abuse accommodation syndrome. Moreover, H.V., in a post-evidentiary-hearing memorandum of law, argued that Ms. Sandlin's testimony should be disregarded by the court. H.V. argued that

[Ms. Sandlin's] claim that 99% of victims recant was clearly erroneous, even based upon this theory which is not admissible in Kentucky courts. The actual claimed recantation rates are more accurately averaged at about 13%.

Attached to H.V.'s memorandum of law was a letter from Dr. Eric Drogan supporting this statement. In this letter, Dr. Drogan cited to a "peer-reviewed scientific journal" wherein the authors provide meta-analysis studies describing recanting rates of 4 to 27 percent, or an average of 13.5 percent.

Given that both sides put their statistical data before the trial court and that the trial court ruled it would attach whatever weight it believed was appropriate to the hearing testimony of Ms. Sandlin, we do not find an abuse of discretion. Even if we were to find the trial court abused its discretion in allowing the testimony, it changes nothing because the trial court did not reference Ms. Sandlin's testimony on this topic in its opinion. Without such, there is no support for H.V.'s argument that the trial court relied

on this testimony. And, as will be examined more fully *infra*, in light of all the evidence presented at the evidentiary hearing, credibility was the primary issue. This is certainly an area well within the trial court's province.

Regarding credibility, the trial court ruled that it

[did] not find credible [E.V.'s] nor [K.V.'s] explanation of the alleged motive to fabricate the trial testimony – a disagreement with their father over a football game. [K.V.] testified at the hearing herein that her sister [P.V.] merely told her to say her father “raped” her without further detail. Contrary to this general statement, Social Worker Julie Sandlin testified at the hearing herein that upon her initial questioning of [K.V., she] gave details of her father's acts, including the explanation that he was “sticking his private part in my private part,” and that he put his “peter in my vagina and my butt.” Sandlin stated that [K.V.] was consistent in her statement. [H.V.] has failed to establish that the trial testimony of either [K.V.] or [E.V.] was false.

Specifically regarding K.V.'s testimony, the trial court noted that she had spent three years in foster care and did not tell anyone that her trial testimony was false. The trial court determined that “[i]t is reasonable to infer that [K.V.] only recanted after being returned to her mother and being taken to see her father. Based on the foregoing, the Court concluded that the truthfulness of the victim's recantation has not been established.”

The trial court also ruled that the “truthfulness of the recantation statements [was] not established and that such statements [were] not so decisive that it is reasonably certain that the verdict [would] be different upon retrial or that the outcome of the trial testimony would have been different if the recantations were presented.” Credibility determinations being within the realm of a trial court's determination, based on the trial

court's credibility determinations regarding E.V. and K.V., even if the trial court abused its discretion in allowing Ms. Sandlin's testimony, we find this was harmless error.

Next, H.V. contends that the trial court erred in denying a new trial because K.V. and E.V., the only two eyewitnesses to the incident, recanted their testimony. H.V. claims that they testified against him at trial under pressure from the prosecutor. At the evidentiary hearing both E.V. and K.V. claimed that Mr. Herald put pressure on them to testify against their father. K.V. testified that she was told she would be taken from her mother, and E.V. testified that he was handcuffed and threatened with perjury if he did not testify against his father.

While E.V. and K.V. paint a grim picture of Mr. Herald and Ms. Sandlin, Mr. Herald and Ms. Sandlin denied the allegations under oath and penalty of perjury. Ms. Sandlin admitted that handcuffs were placed on E.V. by a bailiff, but only because E.V. was punching the walls and this was an attempt to get him under control. Ms. Sandlin testified that others were present in the room when the prosecutor spoke to the children, including a therapist and child advocate. Both Mr. Herald and Ms. Sandlin testified that no one threatened the children nor intimidated them. And, regarding the children's recantation, the trial court found that Ms. Sandlin's evidentiary testimony corroborated the children's trial testimony, not their recantation.

It is H.V.'s burden to show within a reasonable doubt that perjured testimony was in fact introduced against him at trial. *Anderson v. Buchanan*, 292 Ky. 810, 168 S.W.2d 48, 54 (1943). Recanted testimony of any trial witness is viewed with suspicion and does not normally require the granting of a new trial. *Hensley v. Com.*, 488 S.W.2d 388 (Ky. 1961). In fact, such testimony rarely justifies a new trial. *Foley v.*

Com. 55 S.W.3d 809, 814 (Ky. 2000). The trial judge is always in the best position to evaluate and determine the influences and motives that prompt recantation. *Thacker v. Com.*, 453 S.W.2d 566 (Ky. 1970); *Taylor v. Com.*, 175 S.W.3d 68 (Ky. 2005).

Obviously, a new trial is only justified if the trial judge believes that a recantation is true.

H.V. relies heavily on his children's statements regarding the pressures and threats that were made against them to induce them to testify falsely against him at trial. H.V. argues that because K.V. and E.V. were the only two eyewitnesses to the incident, this mandates a new trial. However, both Mr. Herald and Ms. Sandlin testified contrary to the children regarding these alleged threats and pressures. And, Ms. Sandlin testified in great detail to events of the rape as relayed to her by K.V. the day after the incident. Although the children maintain they told their mother earlier that the rape did not occur, their recantation to a third party came three years later, after the children had contact or visits with their father and only after K.V. was returned to the custody of her mother. Given that this issue turns on credibility, we are not in the position to judge this. Credibility is within the trial court's province. The trial court specifically concluded that it did not believe that the children's trial testimony was false. And, having reviewed the trial transcript and evidentiary hearing video, we agree. Accordingly, we conclude the trial court did not abuse its discretion in denying H.V. a new trial.

The final argument by H.V. is that his trial counsel was ineffective, having made errors such that when considered as a whole, the cumulative effect resulted in a denial of H.V.'s right to counsel. H.V. did not argue this nor place any evidence into the record at the evidentiary hearing regarding this claim.

We review ineffective assistance of counsel claims under *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L. Ed. 2d 674 (1984). To be successful on an ineffective assistance of counsel claim, performance of counsel must be below the objective standard of reasonableness and so prejudicial as to deprive a defendant of a fair trial and a reasonable result. “Counsel is constitutionally ineffective only if performance below professional standards caused the defendant to lose what he otherwise would probably have won.” *United States v. Morrow*, 977 F.2d 222, 229 (6th Cir.1992). The critical issue is not whether counsel made errors but whether counsel was so thoroughly ineffective that defeat was snatched from the hands of probable victory.

H.V. had the burden to establish convincingly that he was deprived of some substantial right which would justify the extraordinary relief afforded by the post-conviction proceeding. *Dorton v. Com.*, 433 S.W.2d 117, 118 (Ky. 1968). In

considering

a claim of ineffective assistance of counsel, an appellate court must focus on the totality of 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. *See Morrow*, 977 F.2d at 229; *Kimmelman v. Morrison*, 477 U.S. 365, 106 S.Ct. 2574, 91 L. Ed. 2d 305 (1986).

Regarding this claim, H.V. sets forth seven grounds, the cumulative effect thereof, he contends, resulted in ineffective assistance of counsel. In H.V.’s brief before this Court, he includes the case law governing ineffective assistance of counsel, but he fails to include any arguments, factual allegations, or bases as to how the trial court erred

so this Court could consider why it should reverse the trial court. Rather, he incorporates by reference his *pro se* motion before the trial court.

Having reviewed H.V.'s trial court memorandum and the detailed and well-reasoned opinion written by the trial court, we cannot find error in the trial court's denial of H.V.'s RCr 11.42 motion. Accordingly, we affirm.

ALL CONCUR.

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