

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2001-CA-000762-MR

RONALD DOUGLAS SHELTON

APPELLANT

v. APPEAL FROM GRAVES CIRCUIT COURT  
HONORABLE JOHN T. DAUGHADAY, JUDGE  
ACTION NO. 96-CR-00081

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

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BEFORE: EMBERTON, CHIEF JUDGE; BARBER AND COMBS, JUDGES.

BARBER, JUDGE: Appellant Ronald Douglas Shelton appeals from the trial court's denial of his RCr 11.42 motion to vacate his conviction on the grounds that his counsel was ineffective, and the trial court's refusal to appoint an attorney to represent him with regard to his RCr 11.42 motion.

Shelton was convicted of first degree robbery and being a persistent felony offender in the first degree in a jury trial. He received a 21 year sentence. Following the

conviction, defense counsel made a motion for new trial, arguing that she had made nine errors at trial by failing to request a mistrial on nine different occasions.

On direct appeal, Shelton argued that the trial court failed to hold a hearing on trial counsel's claims of ineffective assistance, or to provide Shelton with an attorney to represent his interests. The Kentucky Supreme Court upheld the conviction on appeal. The Commonwealth asserts that after review and discussion of the claims of ineffective assistance of counsel, and the trial court's ruling on the motion for new trial, which stated that the trial court had considered the nine claims of error made by defense counsel prior to ruling, the Supreme Court made its decision. A review of the Supreme Court's decision shows that, in fact, the merits of Shelton's ineffective assistance of counsel claims were not reviewed by the Supreme Court because Shelton failed to "dispute the merits" of the denial of the motion for new trial or the effectiveness of his counsel on appeal. The Supreme Court stated that Shelton's only recourse was to raise those issues in an RCr 11.42 motion.

Shelton argues that at the hearing on the motion for new trial, defense counsel failed to discuss all the issues before the trial court. Shelton argues that those issues not discussed in the hearing were not preserved for review by the

Supreme Court on direct appeal. Shelton argues that his defense counsel was ineffective for failing to request specific rulings on each issue raised with regard to the motion for new trial.

Appellate review in Kentucky is "confined to whether the motion on its face states grounds that are not conclusively refuted by the record and which, if true, would invalidate the conviction." Osborne v. Commonwealth, Ky. App., 992 S.W.2d 860 (1998). The record reflects that the trial court's order denying the RCr 11.42 motion stated that the trial court conducted a hearing on the motion for new trial, "including a discussion with counsel of the alleged errors and omissions of defense counsel as grounds for a new trial." There is no indication that the trial court or counsel neglected to address all relevant issues in that hearing. The Kentucky Supreme Court, on direct appeal, stated that the discussion between counsel and the trial court was sufficient to meet the requirement that hearing be held on the motion for new trial.

Shelton argues that he was prejudiced by the fact that the counsel who represented him on the motion for new trial was the same counsel who claimed to have been ineffective at trial. He argues that this was a conflict of interest.

The Commonwealth asserts that this issue and the issue of whether trial counsel was ineffective were passed upon by the Kentucky Supreme Court on direct appeal. Issues raised on

direct appeal are not reviewable in an RCr 11.42 motion. Brown v. Commonwealth, Ky., 788 S.W.2d 500, 501 (1990).

Shelton asserts that his constitutional rights were violated when he was denied a full hearing on his RCr 11.42 motion. An evidentiary hearing is required on an RCr 11.42 motion only "if there is a material issue of fact that cannot be conclusively resolved . . . by an examination of the records." Fraser v. Commonwealth, Ky., 59 S.W.3d 448 (2001). As the issues raised in the motion had previously been raised on direct appeal, and the records contained all necessary information upon which to make a ruling, no evidentiary hearing was required.

Shelton claims that the trial court's refusal to appoint counsel to represent him on his RCr 11.42 motion constitutes reversible error. The trial court noted in its order that all relevant information was contained in the file, and that a determination could be made without a hearing. Shelton does not show that this ruling was in error. For this reason, we affirm the trial court's decision.

ALL CONCUR.

BRIEF FOR APPELLANT:

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