

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2001-CA-002179-MR

JOHN STEVEN ROSE

APPELLANT

APPEAL FROM PIKE CIRCUIT COURT  
v. HONORABLE CHARLES E. LOWE, JR., JUDGE  
INDICTMENT NOS. 78-CR-00049, -51, -53, -64, -66, -86

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: EMBERTON, CHIEF JUDGE; DYCHE AND HUDDLESTON, JUDGES.

DYCHE, JUDGE: In 1978 John Steven Rose entered guilty pleas to murder, robbery (first and third degrees), felony theft, second degree escape, and promotion of contraband in the first degree. His sentences of life and forty years=imprisonment are run concurrently. In 1996 Rose sought postconviction relief pursuant to Kentucky Rule of Criminal Procedure (RCr) 11.42 and Kentucky Rules of Civil Procedure 60.02 and 60.03. These motions were ultimately denied by the Pike Circuit Court on August 15, 2001. Rose appeals, and we affirm.

Rose first argues that the trial court erred in denying RCr 11.42 relief without holding an evidentiary hearing. In support of this argument Rose asserts that the indictment for robbery was invalid and that the trial court conducted inadequate inquiry into Rose's mental competence to enter the guilty pleas.

The record and Kentucky law do not support these assertions. Although the indictments for robbery failed to state a person as the victim, Rose was on notice (see Wylie v. Commonwealth, Ky., 556 S.W.2d 1, 2 (1977)) that he was charged with robbing two persons, not two businesses. See also Thomas v. Commonwealth, Ky., 931 S.W.2d 446 (1996), and Casey v. Commonwealth, Ky. App., 994 S.W.2d 18 (1999). And Rose's claim of mental incompetence is refuted on the face of the record. The trial court correctly denied the motion to vacate without holding an evidentiary hearing.

Rose secondly maintains that he was the victim of ineffective assistance of counsel. He alleges the following deficiencies in counsel's performance: Failure to challenge the indictment; failure to properly investigate the charges; failure to research plausible defenses to the crimes charged; and forcing Rose to plead guilty through ~~A~~trickery, fraud, and misrepresentation. @ Again the record refutes Rose's allegations, and the trial court correctly found that Rose did not receive ineffective assistance of counsel. Baze v. Commonwealth, Ky., 23 S.W.3d 619 (2000), cert. denied, 531 U.S. 1157 (2001).

The judgment of the Pike Circuit Court is affirmed.

ALL CONCUR.

APPELLANT *PRO SE*:

John Steven Rose  
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BRIEF FOR APPELLEE:

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