

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2001-CA-002671-MR

HOLLIS CRAIG TURNER

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE MARY C. NOBLE, JUDGE  
ACTION NO. 97-CR-00802

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

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BEFORE: McANULTY, MINTON, AND SCHRODER, JUDGES.

McANULTY, JUDGE. On June 10, 1998, Turner was convicted of one count of Receiving Stolen Property and one count of being a Persistent Felony Offender in the first degree. The charge of Possession of a Handgun by Convicted Felon was severed and on June 16, 1998, Turner pled guilty to that count. A timely Notice of Appeal was filed. Subsequently, appellant was placed at the Marion Adjustment Center (Center). Apparently several institutional stressors led him to escape from the Center. At

some point during his leave this Court dismissed his appeal (1998-CA-001619-MR). Upon being returned to custody, Turner filed a CR 60.02 motion which was denied by the trial court. This Court affirmed the trial court's order on September 6, 2002, (2001-CA-001152-MR).

Appellant filed<sup>1</sup> the present motion to vacate his sentence pursuant to RCr 11.42. The trial court held that appellant had failed to exhaust his remedies on appeal and was not entitled to collateral relief. This appeal followed.

Appellant raises numerous issues in his twenty-six page, single-spaced brief.<sup>2</sup> His arguments include, inter alia, (1) double jeopardy, (2) voluntariness of his statement, (3) denial of right to confront witnesses, (4) incompetent witnesses, (5) recusal of trial judge, and (6) prosecutorial misconduct.

A motion pursuant to RCr 11.42 is limited to issues that were not and could not be raised on direct appeal. Sanders v. Commonwealth, Ky., 89 S.W.3d 380 (2002). All of the above referenced issues could have been brought on direct appeal and therefore, are not subject to review under RCr 11.42.

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<sup>1</sup> As the record is void of any reference to the RCr 11.42 motion the date is omitted.

<sup>2</sup> CR 76.12(4)(a)(ii)(iii) and (4)(b)(i) provide otherwise.

Next, appellant complains of the trial court's denial of an evidentiary hearing when he filed his RCr 11.42 motion. Unfortunately, this issue is incapable of review since the record before us is silent regarding any proceeding or court order ruling on said motion. The responsibility for completeness of the record solely rests with the appellant. Commonwealth v. Thompson, Ky., 697 S.W.2d 143, 144 (1985). When the complete record is not before the Appellate Court, that court must assume that the omitted record supports the decision of the trial court. Thompson, supra.

Review of the record, as it is, would support the trial court's position. However, as we are precluded from determining otherwise, we affirm the trial court on this issue.

Finally, appellant argues that he was denied his right to a direct appeal with regard to his convictions. Appellant asserted the same argument in his CR 60.02 motion adjudicated by this Court (2001-CA-001152-MR). As the Court noted:

Had Turner not escaped from the Center, he would have been able to raise the aforementioned claims. (P. 3.)

His appeal was dismissed because he allowed it to be. This issue having previously been litigated cannot be litigated anew. Bowling v. Commonwealth, Ky., 981 S.W.2d 545 (1998).

For the foregoing reasons, the denial of an evidentiary hearing by the trial court is affirmed. All other

issues having been determined as inappropriate for consideration under RCr 11.42 or previously adjudicated are hereby affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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