

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000685-MR

LANA CURRY

APPELLANT

v. APPEAL FROM LAUREL CIRCUIT COURT
HONORABLE LEWIS B. HOPPER, JUDGE
ACTION NO. 91-CR-00132

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, KNOPF, AND TACKETT, JUDGES.

KNOPF, JUDGE: Lana Curry appeals from an order of the Laurel Circuit Court which denied her motion, filed pursuant to RCr 11.42, for post-conviction relief. Finding no error, we affirm.

Michael Wayne West shot and killed Margaret Alcorn on August 7, 1991. Curry was indicted on August 16, 1991 by the Laurel County Grand Jury for complicity to commit murder by "aiding, abetting and otherwise directing" West to kill Alcorn.

Curry's first trial resulted in a conviction and sentence of sixty years' imprisonment. The Kentucky Supreme Court reversed Curry's conviction in April 1995 because the trial court failed to conduct a competency hearing as required by KRS 504.110(1). On remand, the trial court found Curry competent. Following a second trial, Curry was again convicted of complicity to commit murder, and was sentenced to life imprisonment. The Supreme Court affirmed Curry's conviction in an unpublished opinion which became final on February 19, 1998.¹

Curry filed a RCr 11.42 motion on August 30, 1999, alleging ineffective assistance of counsel. Curry claimed that her attorney refused to allow her to testify, failed to call several character witnesses on her behalf, and did not adequately prepare for trial. The trial court denied this motion on September 1, 1999. No appeal was taken from this judgment.

On February 28, 2002, Curry filed another RCr 11.42 motion. In support of this motion, Curry argued that trial counsel provided ineffective assistance by failing to preserve issues for appellate review and failing to pursue a direct appeal to this Court. The trial court denied Curry's motion on March 5, 2002, citing Curry's failure to provide any "real and

¹ Curry v. Commonwealth, 96-SC-000813 (not to be published opinion rendered November 20, 1997).

present demonstrations" of errors allegedly occurring at trial. This failure, according to the trial court, made Curry's allegations of ineffective assistance of counsel merely bare assertions. This appeal followed.

We agree with the trial court that Curry's motion for post-judgment relief presented only conclusory and non-specific allegations. RCr 11.42(2) provides as follows:

The motion shall be signed and verified by the movant and shall state specifically the grounds on which the sentence is being challenged and the facts on which the movant relies in support of such grounds. Failure to comply with this section shall warrant a summary dismissal of the motion.

The Kentucky Supreme Court has held that RCr 11.42 requires substantial compliance with its provisions in order to confer jurisdiction upon the trial court.² Substantial compliance with RCr 11.42 does not impose any overwhelming burdens upon a movant. In fact, the provisions found in RCr 11.42(2) are essential for the orderly processing of motions for post-conviction relief.

Here, Curry's motion only provides a conclusory and non-specific allegation that her trial counsel provided ineffective assistance by failing to preserve errors for appellate review. None of these alleged errors was identified before the trial court or this Court. A movant under RCr 11.42

² Cleaver v. Commonwealth, Ky., 569 S.W.2d 166, 169 (1978).

must aver facts with sufficient specificity to demonstrate a legal basis for relief.³ RCr 11.42 exists "to provide a forum for known grievances, not to provide an opportunity to research for grievances."⁴ Curry, by failing to allege specific grounds for her motion, failed to comply with the provisions of RCr 11.42(2). Accordingly, RCr 11.42(2) required the trial court to summarily dismiss her motions. Therefore, the trial court properly denied Curry's RCr 11.42 motion without holding a hearing.

From our review of the record, we have found that the trial court's rejection of Curry's RCr 11.42 motion was proper for two additional reasons. First, Curry's RCr 11.42 motion at issue herein was improper as it was a successive motion. It is well established that the courts will not entertain successive RCr 11.42 motions where the grounds for holding the conviction invalid were known or should have been known to the petitioner at the time of the prior motion.⁵ Although Curry's current allegations of ineffective assistance of counsel are unclear since they are not pled with specificity, it is clear that allegations regarding her trial counsel's failure to preserve

³ Lucas v. Commonwealth, Ky., 465 S.W.2d 267 (1971).

⁴ Gilliam v. Commonwealth, Ky., 652 S.W.2d 856, 858 (1983).

⁵ RCr 11.42(3); Lycans v. Commonwealth, Ky., 511 S.W.2d 232 (1974).

issues for appeal should have been raised in the her original RCr 11.42 motion.⁶

Furthermore, RCr 11.42(10) requires that a motion filed under this rule "shall be filed within three years after the judgment becomes final." The time for Curry to file this RCr 11.42 motion runs from the date that an appellate court's judgment on direct appeal becomes final.⁷ The Kentucky Supreme Court's opinion affirming Curry's conviction became final on February 19, 1998. Curry filed the RCr 11.42 motion at issue herein on February 28, 2002, four years after the Supreme Court's opinion became final. Even if Curry's second RCr 11.42 motion were not barred as successive, it was untimely.

For the aforementioned reasons, the judgment of the Laurel Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Bart Adams
Louisville, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler III
Attorney General

Wm. Robert Long
Assistant Attorney General
Frankfort, Kentucky

⁶ Shepherd v. Commonwealth, Ky., 477 S.W.2d 798 (1972).

⁷ Palmer v. Commonwealth, Ky. App., 3 S.W.3d 763 (1999).