

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2002-CA-001263-MR

JAIMIE B. BAILEY

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE GARY D. PAYNE, JUDGE  
ACTION NO. 90-CR-00049

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: BAKER, GUIDUGLI, AND PAISLEY, JUDGES.

BAKER, JUDGE: Appellant Jaimie B. Bailey appeals from a May 15, 2002, order by the Fayette Circuit Court denying his Ky. R. Crim. P. (RCr) 11.42 motion to vacate conviction based on ineffective counsel. We affirm.

Jaimie Bailey was convicted on January 10, 1991, of murder, robbery in the first degree, and carrying a concealed weapon. He was sentenced to life imprisonment without parole or

probation for twenty-five (25) years. The Kentucky Supreme Court affirmed Bailey's conviction on May 27, 1993.

RCr 11.42 allows a criminal defendant to enter a motion to vacate, set aside, or correct a final judgment. On July 6, 2001, Bailey filed a motion pursuant to RCr 11.42 to overturn his conviction on the grounds that his trial counsel was ineffective. The Fayette Circuit Court denied his motion on May 15, 2002, due to the fact that the motion was filed outside the three year statute of limitations prescribed under RCr 11.42 (10). This appeal follows.

The language of RCr 11.42 (10) states:

Any motion under this rule shall be filed within three years after the judgment becomes final, unless the motion alleges and the movant proves either:

(a) that the facts upon which the claim is predicated were unknown to the movant and could not have been ascertained by the exercise of due diligence; or

(b) that the fundamental constitutional right asserted was not established within the period provided for herein and has been held to apply retroactively.

The rule further states that "if the judgment becomes final before the effective date of this rule, the time for filing the motion shall commence upon the effective date of this rule."

RCr 11.42(10).

Bailey's conviction was final in 1993. The three year statute of limitations set forth in RCr 11.42(10), therefore,

applies from October 1, 1994, the effective date of RCr 11.42. Bailey's window to file a motion pursuant to RCr 11.42 thus expired on October 1, 1997, three years after the effective date of the amendment. Appellant did not file his RCr 11.42 motion until July 6, 2001, almost four years following the end of the statute of limitations.

The reason given for the delay in Bailey's motion - his alleged inability to obtain a trial transcript -- is an insufficient basis for tolling the statute of limitations. The elements under RCr 11.42 (10) required to toll the statute simply have not been met. No new facts upon which the claim is predicated have been discovered by Appellant, nor has a fundamental constitutional right been established. Although Bailey may have faced hardship in his attempts to have his case reviewed, this does not constitute sufficient justification to allow the RCr 11.42 motion to be reviewed by this Court. Therefore, there is no reason to assess the merits of Appellant's claim.

For the foregoing reasons, the order of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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