

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2002-CA-002568-MR

HENRY CUNNINGHAM

APPELLANT

v. APPEAL FROM HENDERSON CIRCUIT COURT  
HONORABLE STEPHEN A. HAYDEN, JUDGE  
ACTION NO. 99-CR-00142

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: BARBER, DYCHE, AND McANULTY, JUDGES.

BARBER, JUDGE: Appellant, Henry Cunningham (Cunningham),  
appeals pro se denial of his request for post conviction relief.  
Cunninham objects to the adverse ruling of the Henderson circuit  
court claiming error in the denial of his motion to suppress,  
and his motion to dismiss the indictment. We affirm the trial  
court's rulings.

Cunningham was indicted on charges of manufacturing methamphetamine; possession of a firearm by a convicted felon, and being a persistent felony offender in the first degree. Following his conviction, Cunningham filed a direct appeal to this Court. In that appeal Cunningham argued that the trial court erred by refusing to suppress his statement to the police; that the trial court erred by refusing to suppress the evidence found in the hotel room; and that the court erred by refusing to suppress the evidence of the firearm found in the motel room. On October 4, 2002, the Court of Appeals affirmed the judgment against Cunningham.

The father of a 17 year old minor female reported her as a missing person. The investigating officers received information tending to show that the minor was in the Sugar Creek Hotel with Cunningham. Police officers knocked on the motel room door and Cunningham opened the door to them. The minor was also in the room. The officer smelled a chemical odor when Cunningham opened the room door and saw a trash can in the back of the room emitting white smoke. The officer, who is trained in identification of materials used to manufacture methamphetamine, indicated that the situation appeared hazardous to the occupants' health. The officer entered the room and noted a broken smoking jar in the trash can and a brown substance bubbling in the toilet.

The investigating officer testified that Cunningham told him that he and the registered occupant of the room had an agreement in which Cunningham purchased the items to manufacture the illegal substance, and the parties split the proceeds. Cunningham claimed that he told the officer that he was merely staying in the room due to difficulties with his wife, and that he was puzzled by the substances in the room. Cunningham denied that there was any smoke or odor in the room, and claimed that the substance in the toilet was not visible to the officers. Cunningham claims that he did not give the officers permission to search the room.

Prior to trial, the court heard Cunningham's motion to suppress the evidence. The motion was denied. Cunningham claims that the denial constitutes reversible error. This issue was raised previously before this Court, and was affirmed. For this reason, we cannot address the issue again under the principle of res judicata. Barnett v. Commonwealth, Ky., 348 S.W.2d 834 (1961).

Cunningham asserts that the trial court erred in refusing to suppress the statement of the minor. Cunningham claims that she was coerced into giving a statement that incriminated him. Although this issue was not raised in Cunningham's direct appeal, it could have been, and was integrally related to the issues he did raise on appeal. For

this reason, review of that matter is similarly barred by the doctrine of res judicata. Egbert v. Curtis, Ky. App., 695 S.W.2d 123, 124 (1985).

Cunningham claims that KRS 218A.1432, the statute making it a crime to possess the materials and have the intent to manufacture methamphetamine, is vague and unconstitutional. Cunningham made a motion to dismiss the indictment on those grounds. The motion was denied by the court. Kentucky law holds that the statute is not unconstitutional. Kotila v. Commonwealth, Ky., 114 S.W.3d 226, 249 (2003). For this reason, Cunningham's argument fails.

Cunningham entered a plea of guilty to the charges against him. The Commonwealth points out that the guilty plea Cunningham entered was not conditional, and did not grant him the right to appeal his plea. Cunningham claims that the plea was conditional. A review of the record shows that the plea was conditional only on the results of the hearing on his motion to suppress evidence, and did not reserve the right to appeal. For this reason, the terms of the plea agreement bar an appeal of the conviction. Cunningham voluntarily entered the plea of guilty, and is bound by its terms.

For these reasons, the judgment of the Henderson circuit court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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