

RENDERED: SEPTEMBER 2, 2005; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2004-CA-001469-MR

STEVE EASON

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE TOM McDONALD, JUDGE  
ACTION NO. 90-CR-001380

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: KNOPF AND TACKETT, JUDGES; ROSENBLUM, SENIOR JUDGE.<sup>1</sup>

ROSENBLUM, SENIOR JUDGE: Steve Eason appeals the denial of his RCr 11.42 motion for relief from a 1992 judgment convicting him of first-degree assault and of being a persistent felon in the second degree, arguing that the trial court erred in failing to sua sponte order a competency evaluation. Conceding that RCr

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<sup>1</sup> Senior Judge Paul W. Rosenblum sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

11.42 is not the appropriate vehicle for lodging his complaint, appellant nevertheless maintains that the error is one which should be reviewed under the doctrine of palpable error. Finding no merit in appellant's contention, we affirm the denial of relief by the Jefferson Circuit Court.

Of the several bases upon which we might uphold the decision of the circuit court, the most salient factor is appellant's failure to raise this issue in four previous post-conviction proceedings. Review of the record discloses that appellant's mental health history was previously addressed by this Court in an opinion reversing the denial of his initial RCr 11.42 motion and remanding the case for an evidentiary hearing. As a result of that remand, appellant sought to amend his previous motion to advance several additional arguments, although his current competency contention is not among them.

A second appeal, stemming from the ultimate denial of appellant's initial motion after the evidentiary hearing, produced a December 5, 1997 opinion of this Court rejecting, among other things, appellant's contention that trial counsel had been ineffective in failing to pursue defenses predicated upon theories of insanity and/or extreme emotional disturbance. After noting that appellant had a history of "severe mental

problems,"<sup>2</sup> the Court concluded that counsel's trial strategy had been fashioned to support appellant's version of the events surrounding the incident which culminated in his indictment, including his adamant denial of having stabbed the victim. On this state of the record, we are convinced that appellant had ample opportunity to properly raise his current competency complaint and that the trial court did not err in refusing to grant relief on that basis at this point in the post-conviction process.

In Gross v. Commonwealth, 648 S.W.2d 853, 856 (Ky. 1983), the Supreme Court of Kentucky emphasized that the "structure provided in Kentucky for attacking the final judgment of a trial court in a criminal case is not haphazard and overlapping, but is organized and complete." After exhausting the remedies available by direct appeal, a defendant aggrieved by a judgment in a criminal proceeding must utilize the procedure set out in RCr 11.42. Pertinent to appellant's current RCr 11.42 complaint is the following directive concerning the contents and effect of such motions:

Final disposition of that motion [an RCr 11.42 motion], or waiver of the opportunity to make it, shall finally conclude all issues that reasonably could have been presented in that proceeding. The language of RCr 11.42 forecloses the defendant from raising any questions under

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<sup>2</sup> Eason v. Commonwealth, 97-CA-0857-MR, rendered 12/5/97, non-published.

CR 60.02 which are "issues that could reasonably have been presented" by RCr 11.42 proceedings.

Id. at 857, emphasis added. It is thus apparent that judicial review of appellant's competency argument has been foreclosed by his failure to address that question in his initial RCr 11.42 motion. Hampton v. Commonwealth, 454 S.W.2d 672 (Ky. 1971).

Aside from this obvious procedural impediment, even a cursory review of the record dispels any hint of palpable error. In the March 21, 1997 order rejecting appellant's contention in his initial RCr 11.42 motion that his counsel had been ineffective in failing to mount a voluntary intoxication or insanity defense, the trial judge cited the testimony of trial counsel that "there was no question as to Eason's ability to remember the circumstances" which occurred on the day of the incident, as well as appellant's own insistence that he did not commit the offense charged. Those findings clearly established appellant's ability to rationally participate in his defense and thus preclude his current attempt to create an issue concerning his competence to stand trial. See Mills v. Commonwealth, 996 S.W.2d 473 (Ky. 1999).

The judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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