

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001576-MR

BOBBY W. PERGRAM

APPELLANT

v. APPEAL FROM MONTGOMERY CIRCUIT COURT
HONORABLE BETH LEWIS MAZE, JUDGE
INDICTMENT NO. 01-CR-00001

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DYCHE, HENRY, AND TACKETT, JUDGES.

DYCHE, JUDGE: Bobby W. Pergram appeals from an order of the Montgomery Circuit Court denying his motion for post-conviction relief filed pursuant to RCr 11.42. We affirm.

Pergram was convicted of two counts of menacing by a jury, and sentenced to consecutive terms of 90 days' confinement. He was also fined \$500.00. He filed a direct appeal to this court; we affirmed, finding no illegality in his

arrest, and that the trial court did consider, but rejected, probation. The Supreme Court denied discretionary review.

He later filed a motion in the trial court, seeking relief from the conviction, and raising: newly discovered evidence; improper instructions to the jury; and error in running the sentences consecutively as grounds for relief from his sentence. The motion was denied, and this appeal followed.

On appeal, Pergram now raises illegality of his arrest, and, again, that the trial court did not consider probation. Neither of these grounds was raised below in his RCr 11.42 motion, and both were considered, and rejected, in his direct appeal. They will not be considered here, for both reasons. Brock v. Commonwealth, 479 S.W.2d 644 (Ky. 1972); Brown v. Commonwealth, 788 S.W.2d 500 (Ky. 1990).

The order of the Montgomery Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT *PRO SE*:

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BRIEF FOR APPELLEE:

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