

RENDERED: July 8, 2005; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001624-MR

RICKEY R. MOON

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JAMES M. SHAKE, JUDGE
ACTION NO. 95-CR-001633

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BUCKINGHAM, DYCHE, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Rickey R. Moon brings this pro se appeal from a June 17, 2004, Order of the Jefferson Circuit Court denying his Ky. R. Civ. P. (CR) 60.03, CR 61.02, Ky. R. Crim. P. (RCr) 6.10(3), and RCr 6.12 motion to vacate sentence. We affirm.

On January 15, 1997, the Jefferson Circuit Court sentenced appellant to a total of fifteen years' imprisonment after being found guilty of first-degree trafficking in a controlled substance, first-degree promoting contraband, attempting to elude police, and operating a motor vehicle while

license revoked/suspended. Appellant also pled guilty to being a persistent felony offender in the first degree. A direct appeal was taken to this Court and was affirmed in Appeal No. 1997-CA-000184-MR; discretionary review was denied by the Supreme Court in Appeal No. 1998-SC-000595-D. Subsequently, on October 26, 2000, appellant filed a motion to vacate sentence under RCr 11.42. Therein, he raised various allegations of ineffective assistance of counsel. On February 9, 2001, the circuit court denied the RCr 11.42 motion, and this Court affirmed that decision in Appeal No. 2001-CA-000580-MR.

On June 8, 2004, appellant filed a motion to vacate sentence under CR 60.03, CR 61.02, RCr 6.10(3), and RCr 6.12. The circuit court summarily denied the motion on June 17, 2004, thus precipitating this appeal.

Appellant contends the circuit court committed error by summarily denying his motion to vacate sentence. In his motion before the circuit court and in his brief on appeal, appellant argues that his trial counsel was ineffective for failing to challenge the indictment and for failing to object to jury instructions. It is well-established that a defendant is required to raise in an RCr 11.42 motion "any ground of which he is aware, or should be aware, during the period when the remedy is available to him." McQueen v. Commonwealth, 948 S.W.2d 415, 416 (Ky. 1997). Appellant offers no reasonable explanation as

to why his claims of ineffective assistance of counsel were not or could not have been raised in his previous RCr 11.42 motion. See Richardson v. Howard, 448 S.W.2d 49 (Ky. 1969).

Accordingly, we must agree with the circuit court that appellant is not entitled to relief as his allegations could have been raised in his previous RCr 11.42 motion to vacate sentence.

For the foregoing reasons, the Order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Rickey Raynardo Moon, Pro Se
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

Samuel J. Floyd, Jr.
Assistant Attorney General
Frankfort, Kentucky