

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001889-MR

GREGORY CHAPA

APPELLANT

v.

APPEAL FROM KENTON CIRCUIT COURT
HONORABLE PATRICIA M. SUMME, JUDGE
ACTION NO. 98-CR-00553

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, CHIEF JUDGE; McANULTY, JUDGE; PAISLEY, SENIOR JUDGE.¹

McANULTY, JUDGE: In this collateral attack under RCr 11.42, Gregory Chapa (Gregory) appeals the trial court's denial of his *pro se* motion to correct his sentence. In January of 1999, Gregory entered a guilty plea to third degree burglary and being a persistent felony offender in the second degree. The trial court sentenced him to five years on the burglary charge, enhanced to seven years by the persistent felony offender

¹ Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

charge. See this Court's unpublished opinion in Chapa v. Commonwealth, 2000-CA-002931-MR (2002), which recited Gregory's actual sentence. Gregory argues that his sentence is contrary to KRS 532.080. In addition to the argument pertaining to sentencing, Gregory argues -- for the first time in this appeal -- that his trial counsel rendered ineffective assistance. Because the allegation that a sentence is imposed contrary to law should be raised on direct appeal and a postconviction proceeding under RCr 11.42 is not a substitute for a direct appeal, we affirm. See Cinnamon v. Commonwealth, 455 S.W.2d 583, 584 (Ky. 1970). As to Gregory's claims that he received ineffective assistance of counsel, he is precluded from asserting these claims on appeal because he did not first raise them in his motion before the trial court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Gregory Chapa, Pro Se
Eddyville, Kentucky

BRIEF FOR APPELLEE:

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