

RENDERED: MAY 30, 2008; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2004-CA-002391-MR  
&  
NO. 2006-CA-001760-MR

WILLIAM SHANNON BALDRIDGE

APPELLANT

v.

APPEALS FROM GREENUP CIRCUIT COURT  
HONORABLE LEWIS D. NICHOLLS, JUDGE  
ACTION NO. 02-CR-00137

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
VACATING AND REMANDING  
APPEAL NO. 2004-CA-002391-MR  
AND  
REVERSING APPEAL NO. 2006-CA-001760-MR

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BEFORE:  FORMTEXT  LAMBERT AND TAYLOR , JUDGES;  
BUCKINGHAM,  SENIOR JUDGE.

TAYLOR, JUDGE: William Shannon Baldrige, *pro se*, brings Appeal No. 2004-  
CA-002391-MR from a September 3, 2004, order and Appeal No. 2006-CA-  
001760-MR from an August 3, 2006, order of the Greenup Circuit Court denying

two Kentucky Rules of Criminal Procedure (RCr) 11.42 motions. We vacate and remand Appeal No. 2004-CA-002391-MR and reverse Appeal No. 2006-CA-001760-MR.

The procedural facts of this case are convoluted. In an effort to succinctly set forth same, we shall itemize the relevant procedural steps leading to these appeals.

- By judgment entered August 28, 2003, the Greenup Circuit Court sentenced Baldrige to five-years' imprisonment upon a jury verdict of guilty to second-degree assault.
- By notice of appeal filed August 28, 2003, Baldrige pursued a direct appeal (Appeal No. 2003-CA-001841-MR) of his judgment of conviction to the Court of Appeals.
- On June 23, 2004, Baldrige filed a *pro se* RCr 11.42 motion to vacate sentence alleging that trial counsel, Samuel Weaver, rendered ineffective assistance.
- By order entered July 15, 2004, the circuit court appointed a public advocate to represent Baldrige in relation to the RCr 11.42 motion.
- On July 21, 2004, James Lyon, Jr. entered an appearance on behalf of Baldrige and filed a Motion To Consider all Pending Motions.

- By order entered September 3, 2004, the circuit court denied Baldridge's RCr 11.42 motion. The court stated that "it has previously overruled all of the defendant's motions and the ruling on the Motion pursuant to RCr 11.42, has been appealed by the defendant and is currently before the Court of Appeals[.]"
- On September 7, 2004, Baldridge filed a *pro se* motion to clarify order overruling RCr 11.42 and requesting findings of fact and conclusions of law. Therein, Baldridge alleged that the circuit court had not previously denied an RCr 11.42 motion; thus, there was no pending appeal of same in the Court of Appeals.
- By order entered September 23, 2004, the circuit court denied Baldridge's motion to clarify.
- By a timely tendered and filed notice of appeal, Baldridge *pro se* appealed (Appeal No. 2004-CA-002391-MR) the September 7, 2004, order denying his RCr 11.42.<sup>1</sup>
- On October 25, 2004, Baldridge *pro se* filed a second RCr 11.42 motion alleging that postconviction counsel, Lyon,

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<sup>1</sup> The notice of appeal, as well as a motion to proceed *in forma pauperis* and for appointment of counsel, was timely tendered by William Shannon Baldridge, proceeding *pro se* and filed by the clerk on November 3, 2004. The notice of appeal was timely filed under Kentucky Rules of Civil Procedure 73.02.

rendered ineffective assistance in regard to the first RCr 11.42 motion.

- On March 8, 2005, Baldrige, by appointed counsel Edward L. Gafford, filed a supplemental RCr 11.42 motion again claiming that postconviction counsel, Lyon, rendered ineffective assistance.
- By opinion rendered May 27, 2005, in Appeal No. 2003-CA-001841-MR, the Court of Appeals affirmed Baldrige's direct appeal challenging his judgment of conviction.<sup>2</sup>
- Following an evidentiary hearing, the circuit court denied Baldrige's second RCr 11.42 motion by order entered August 3, 2006. In this order, the court determined that both Weaver, trial counsel for Baldrige, and Lyon, RCr 11.42 counsel, did not render ineffective assistance.
- By notice of appeal filed August 22, 2006, Baldrige appealed (Appeal No. 2006-CA-001760-MR) the August 3, 2006, order denying his second RCr 11.42 motion.

These appeals follow.

Because of the circuit court's August 3, 2006, order, these appeals are inextricable intertwined. Thus, resolution of these appeals may only be achieved by a joint analysis. Our opinion shall proceed accordingly.

<sup>2</sup> By order entered September 14, 2005, the Supreme Court denied Baldrige's motion for discretionary review.

In Appeal No. 2004-CA-002391-MR, Baldrige maintains that the circuit court erroneously denied his first RCr 11.42 motion wherein he claimed that trial counsel, Weaver, rendered ineffective assistance. In its September 3, 2004, order denying the first RCr 11.42 motion, the circuit court stated that it had previously denied Baldrige's RCr 11.42 motion and that such denial was pending on appeal before the Court of Appeals.

A review of the record reveals that the circuit court was mistaken. There exists no previous order denying an RCr 11.42 motion, and no appeal was then pending in the Court of Appeals from such a denial. Rather, the only appeal then before the Court of Appeals was Baldrige's direct appeal of his judgment of conviction (Appeal No. 2003-CA-001841-MR). From these procedural facts alone, it is clear that the circuit court erroneously denied Baldrige's first RCr 11.42 motion in its September 3, 2004, order. However, resolution of this appeal (Appeal No. 2004-CA-002391-MR) is complicated by the circuit court's subsequent actions leading to Appeal No. 2006-CA-001760-MR.

After entry of the September 3, 2004, order denying the first RCr 11.42 motion, Baldrige filed a second RCr 11.42 motion alleging that postconviction counsel, Lyon, rendered ineffective assistance in regard to his representation of Baldrige in the first RCr 11.42 motion. An evidentiary hearing was held by the circuit court. At the evidentiary hearing, as well as in the second RCr 11.42 motion, Baldrige's allegations centered upon postconviction counsel, Lyons', ineffective assistance. Accordingly, Baldrige only produced evidence at

the evidentiary hearing showing Lyon's ineffective assistance of counsel.

Nevertheless, in its order of August 3, 2006, denying Baldrige's second RCr 11.42 motion, the circuit court inexplicably ruled upon whether Baldrige's trial counsel, Weaver, rendered ineffective assistance during trial. In its findings of fact and conclusions of law, the circuit court determined that Weaver and Lyon did not render ineffective assistance of counsel.

The issue of whether trial counsel, Weaver, rendered ineffective assistance was the subject of the first RCr 11.42 motion, and the denial of same was appealed to this Court (Appeal No. 2004-CA-002391-MR). Baldrige's second RCr 11.42 motion only concerned whether postconviction counsel, Lyon, rendered ineffective assistance (Appeal No. 2006-CA-001760-MR). And, at the evidentiary hearing upon the second RCr 11.42 motion, Baldrige only produced evidence bearing upon Lyon's ineffective assistance. Although the circuit court ruled upon Baldrige's claim that Weaver rendered ineffective assistance in its August 3, 2006, order, we do not believe that such claim was properly before the circuit court. In reaching this decision, we are mindful that Baldrige neither asserted any claims nor offered any evidence concerning Weaver's ineffective assistance after the circuit court denied the first RCr 11.42 motion by order entered September 3, 2004. Moreover, the September 3, 2004, order became final on September 23, 2004, with entry of the circuit court's order denying Baldrige's postjudgment motion. Thereafter, an appeal (Appeal No. 2004-CA-002391-MR) was taken to this Court from the September 3, 2004, order. Consequently, the

circuit court lost jurisdiction to amend or modify the September 3, 2004, order. See *Com. v. Sowell*, 157 S.W.3d 616 (Ky. 2005); *Com. v. Blincoe*, 33 S.W.3d 533 (Ky.App. 2000).

In sum, we hold that the circuit court erred by denying Baldrige's first RCr 11.42 motion. Thus, we vacate and remand Appeal No. 2004-CA-002391-MR. Upon remand, the circuit court shall appoint Baldrige postconviction counsel and shall reconsider Baldrige's first RCr 11.42 motion, wherein it was claimed that trial counsel, Weaver, rendered ineffective assistance. As to Appeal No. 2006-CA-001760-MR, we reverse. The circuit court erred by ruling upon Baldrige's claim that trial counsel, Weaver, rendered ineffective assistance. In so doing, we merely decide that the circuit court was procedurally barred from ruling upon such claim in that proceeding. Our opinion should not be misconstrued as reaching the merits of such claim. As to the circuit court's ruling that postconviction counsel, Lyon, did not render ineffective assistance, we view such claim as now rendered moot by our disposition of Appeal No. 2004-CA-002391-MR.<sup>3</sup>

We deem Baldrige's remaining contentions as moot.

For the foregoing reasons, the order of the Greenup Circuit Court in Appeal No. 2004-CA-002391-MR is reversed and remanded for proceedings not

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<sup>3</sup> For the sake of clarity, it should be stressed that we do not reach the merits of Baldrige's claim that postconviction counsel, James Lyon, Jr., rendered ineffective assistance. We note, however, that Lyon's representation was, at the very least, lacking in proficiency.

inconsistent with this opinion and the order in Appeal No. 2006-CA-001760-MR is reversed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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