

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-002433-MR

JAMES BURKHART

APPELLANT

v. APPEAL FROM LAUREL CIRCUIT COURT
HONORABLE LEWIS B. HOPPER, JUDGE
INDICTMENT NO. 01-CR-00303

COMMONWEALTH OF KENTUCKY

APPELLEE

AND

NO. 2005-CA-001549-MR

JAMES BURKHART

APPELLANT

v. APPEAL FROM LAUREL CIRCUIT COURT
HONORABLE GREGORY A. LAY, JUDGE
INDICTMENT NO. 01-CR-00303

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DYCHE¹ AND VANMETER, JUDGES; BUCKINGHAM, SENIOR JUDGE.²

DYCHE, JUDGE: These consolidated appeals concern James Burkhart's collateral attacks (pursuant to RCr 11.42 and CR 60.02, respectively) from his judgment of conviction in the Laurel Circuit Court on indictment No. 2001-CR-0303. We affirm.

Burkhart was convicted by jury for first degree criminal mischief, leaving the scene of an accident, owning or operating a motor vehicle without insurance, and the status offense of persistent felony offender in the first degree. He was sentenced to a total of twenty years' imprisonment.

Burkhart's conviction was affirmed on direct appeal to the Kentucky Supreme Court. See Burkhart v. Commonwealth, 125 S.W.3d 848 (Ky. 2004).

Burkhart subsequently filed a motion pursuant to RCr 11.42, alleging ineffective assistance of counsel (for failure to subpoena two alibi witnesses), insufficient evidence of wanton conduct, and improper sentencing. The Laurel Circuit Court denied relief, and Burkhart moved for reconsideration pursuant to CR 59.05. He appeals from the denial of both motions.

¹ This opinion was completed and concurred in prior to Judge R. W. Dyche, III's retirement effective June 17, 2006. Release of the opinion was delayed by administrative handling.

² Senior Judge David C. Buckingham, sitting as Special Judge by Assignment of the Chief Justice pursuant to Section 110 (5)(b) of the Kentucky Constitution and KRS 21.580.

Meanwhile, Burkhart sought further post-conviction relief pursuant to CR 60.02, wherein he again alleged insufficient evidence to support the conviction, improper sentencing, and irregularities in the indictment. He appeals from the Laurel Circuit Court's denial of that motion.

We have examined the record in its entirety and hold that Burkhart has failed to convince us that his RCr 11.42 motion entitled him to the requested relief. His allegations of ineffective assistance of counsel did not meet the burden of proving error resulting in prejudice (see Strickland v. Washington, 466 U.S. 668 (1984); accord Gall v. Commonwealth, 702 S.W.2d 37 (Ky. 1985)). His other allegations are not properly taken pursuant to this Rule of Criminal Procedure. See, e.g., Williams v. Commonwealth, 639 S.W.2d 788 (Ky.App. 1982); and Parker v. Commonwealth, 465 S.W.2d 180 (Ky. 1971).

Burkhart has further failed to meet his burden that the trial court abused its discretion in denying his CR 60.02 motion. Gross v. Commonwealth, 640 S.W.2d 853 (Ky. 1983).

The orders of the Laurel Circuit Court are affirmed.

ALL CONCUR.

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