

RENDERED: AUGUST 18, 2006; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2005-CA-000763-MR

GERALD LEE FERGUSON

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE STEPHEN P. RYAN, JUDGE  
ACTION NO. 01-CR-000447

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ABRAMSON AND VANMETER, JUDGES; KNOPF,<sup>1</sup> SENIOR JUDGE.

KNOPF, SENIOR JUDGE: Gerald Lee Ferguson was convicted of three counts of burglary in the second degree, possession of burglar's tools, and being a persistent felony offender in the first degree following a jury trial in Jefferson Circuit Court. He received a sentence of fourteen years' imprisonment. This Court affirmed the judgment in its entirety on direct appeal in case no. 2001-CA-002646-MR. On January 13, 2005, Ferguson, *pro se*,

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<sup>1</sup> Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

filed a motion to vacate his conviction pursuant to RCr 11.42, which the trial court denied without conducting an evidentiary hearing. On appeal, Ferguson claims that he was denied the effective assistance of both trial and appellate counsel. We affirm.

Ferguson argues that he was denied effective assistance of counsel because trial counsel failed to make a record adequate for review by an appellate court. However, Ferguson neither supports this argument with any allegations of specific fact beyond an asserted conclusion nor does he attempt to contradict the trial court's extensive findings in any way. From our review of the record, we are convinced that reversal is unwarranted.

Ferguson next argues that he was denied effective assistance of appellate counsel. However, ineffective assistance of appellate counsel is not a cognizable claim in this Commonwealth. Lewis v. Commonwealth, 42 S.W.3d 605, 614 (Ky. 2001).

Therefore, the order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Gerald Lee Ferguson, *Pro Se*

BRIEF FOR APPELLEE:

Gregory D. Stumbo  
Attorney General of Kentucky

Wm. Robert Long, JR.  
Assistant Attorney General