

Commonwealth Of Kentucky

Court of Appeals

NO. 2006-CA-000028-MR

JEFFERY L. CARPENTER

APPELLANT

v. APPEAL FROM LOGAN CIRCUIT COURT
HONORABLE TYLER L. GILL, JUDGE
ACTION NO. 85-CR-00050

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: DIXON AND TAYLOR, JUDGES; KNOPF,¹ SENIOR JUDGE.

TAYLOR, JUDGE: Jeffery L. Carpenter brings this *pro se* appeal from a May 3, 2004, order of the Logan Circuit Court summarily denying his Ky. R. Crim. P. (RCr) 11.42 motion as time-barred. We affirm.

The record indicates that on April 24, 1990, appellant was sentenced to four years' imprisonment upon a guilty plea to third-degree burglary. Appellant did not pursue a direct appeal

¹ 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 Kentucky Revised Statutes 21.580.

challenging the sentence. On January 26, 2004, appellant filed an RCr 11.42 motion seeking to vacate his sentence. On May 3, 2004, the circuit court entered an order denying his motion as time-barred. This appeal follows.

RCr 11.42(10) provides, in relevant part, as follows:

Any motion under this rule shall be filed within three years after the judgment becomes final, unless the motion alleges and the movant proves either:

(a) that the facts upon which the claim is predicated were unknown to the movant and could not have been ascertained by the exercise of due diligence; or

(b) that the fundamental constitutional right asserted was not established within the period provided for herein and has been held to apply retroactively.

If the judgment becomes final before the effective date of this rule, the time for filing the motion shall commence upon the effective date of this rule. . . . (Emphasis added.)

In the case at hand, the judgment sentencing appellant was entered on April 24, 1990. The effective date of RCr 11.42(10) was October 1, 1994. As such, appellant had three years from the effective date of the rule to file an RCr 11.42 motion. Appellant did not file his RCr 11.42 motion until January 26, 2004, well outside the three-year time limit to file the motion. Therefore, we conclude that the motion was filed outside the three-year time period of RCr 11.42(10). Moreover, appellant's RCr 11.42 motion did not allege that the claim was

based upon facts unknown to him or that a fundamental constitutional right was involved. As such, we are of the opinion that appellant's RCr 11.42 motion was time-barred under RCr 11.42(10) and the circuit court properly dismissed same.

For the foregoing reasons, the order of the Logan Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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