

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-000569-MR

LESLIE SMITH

APPELLANT

v. APPEAL FROM HANCOCK CIRCUIT COURT  
HONORABLE RONNIE C. DORTCH, JUDGE  
ACTION NO. 80-CR-00035

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DIXON AND VANMETER, JUDGES; GRAVES,<sup>1</sup> SENIOR JUDGE.

VANMETER, JUDGE: Leslie Smith appeals from the Hancock Circuit Court's order denying his third motion for relief pursuant to RCr<sup>2</sup> 11.42. For the following reasons, we affirm.

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

<sup>2</sup> Kentucky Rules of Criminal Procedure.

Smith pled guilty in 1981 to kidnapping, first-degree robbery, first-degree rape, and first-degree sodomy, and was sentenced to a total of 50 years' confinement. He filed an RCr 11.42 motion, which the circuit court denied. This court affirmed the circuit court's decision in February 1984. Smith subsequently filed a second RCr 11.42 motion, alleging that his sentence for kidnapping was exempt pursuant to KRS 509.050,<sup>3</sup> which the circuit court also denied. After Smith appealed, this court affirmed in October 1995.

On March 2, 2006, Smith filed a third RCr 11.42 motion, again arguing that his sentence for kidnapping was exempt pursuant to KRS 509.050. The circuit court denied Smith's motion. This appeal followed.

In this court's opinion affirming the Hancock Circuit Court's order denying Smith's second motion for relief pursuant to RCr 11.42, we cited *Centers v. Commonwealth*, 799 S.W.2d 51 (Ky.App. 1990), and held that because Smith voluntarily pled guilty to the charges against him, he waived all defenses except that the indictment charged no offense. *Smith v. Commonwealth*, No. 94-CA-0184-MR, slip op. at 1-2 (Ky.App. Oct. 6, 1995). Thus, Smith could not raise the issue of whether KRS 509.050 applied to his case. *Id.* As our previous holding is binding in the matter now before us, wherein Smith has raised the same allegations, the circuit court did not err by denying Smith's RCr 11.42 motion or by failing to hold a hearing on his motion. Indeed, pursuant to RCr 11.42(3), Smith is "precluded from raising issues in a successive RCr 11.42

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<sup>3</sup> KRS 509.050 provides, in part, that a person may not be convicted of kidnapping "when his criminal purpose is the commission of an offense defined outside this chapter and his interference with the victim's liberty occurs immediately with and incidental to the commission of that offense, unless the interference exceeds that which is ordinarily incident to commission of the offense which is the objective of his criminal purpose."

motion which were or could have been raised in the first motion.” *McQueen v. Commonwealth*, 949 S.W.2d 70, 71 (Ky. 1997).

Finally, a motion requesting relief pursuant to RCr 11.42 “shall be filed within three years after the judgment becomes final,” absent circumstances not present here. RCr 11.42(10). Since Smith’s RCr 11.42 motion here was not timely under this provision, the circuit court did not err by denying the motion or by failing to hold an evidentiary hearing.

The Hancock Circuit Court’s order is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Leslie Smith  
LaGrange, Kentucky

BRIEF FOR APPELLEE:

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