

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-002499-MR

LEON HARRIS

APPELLANT

v.

APPEAL FROM BOYLE CIRCUIT COURT  
HONORABLE WILLIAM R. HARRIS, JUDGE  
ACTION NO. 96-CR-00014

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: LAMBERT, TAYLOR, AND WINE, JUDGES.

WINE, JUDGE: Leon Harris, *pro se*, appeals the Boyle Circuit Court's denial of his second RCr 11.42 motion.<sup>1</sup> Harris argues in this present request for RCr 11.42 relief that:

1) he was denied due process when the trial court failed to instruct the jury on all degrees of homicide; and 2) he received ineffective assistance of counsel when his attorney failed

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<sup>1</sup> Although counsel for the Commonwealth objects to the Appellant's *pro se* pleadings because he was assisted by a "resident legal aid," we do not find such assistance either objectionable nor do we deem it to be within the prohibition against the practice of law without a license. Further, we do not believe the Appellant's requested sanctions to be appropriate at this time and therefore decline to issue a show cause order.

to object and move for a mistrial after defense witnesses made inflammatory hearsay statements and fabricated testimony. Finding no error, we affirm.

Harris was indicted in Boyle County for the murder of Rozland Turner. On November 13, 1996, a Boyle County Circuit Court jury found Harris guilty of murder and set his punishment at life in prison. The Kentucky Supreme Court affirmed his conviction on October 30, 1997. Subsequently, on April 7, 1998, Harris filed a RCr 11.42 motion to the trial court arguing that two witnesses testified that he had previously molested the victim; that he was denied his right to cross-examine those witnesses regarding that testimony; that the trial court erred because it allowed a videotape of the crime scene to be entered into evidence; that the Commonwealth did not prove all the elements of the charge; and generally that he was denied effective assistance of counsel. This motion was denied on all grounds, except for the issue of the two witnesses who testified about the sexual molestation. The trial court held a hearing on the matter before entering an order on November 9, 1998, denying Harris's RCr 11.42 motion.

This Court affirmed the trial court on April 17, 2000. This Court sufficiently addressed the issues and concluded that Harris was afforded effective assistance of counsel and that the evidentiary hearing was not necessary. Six years later, Harris filed yet another RCr 11.42 motion which was also denied by the trial court. The trial court concluded that either the issues raised were ones that should have been brought on direct appeal or that the three-year statute of limitations had expired. This appeal followed.

RCr 11.42(10) requires:

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.

Neither of the above exceptions are applicable here. Accordingly, Harris's motion is procedurally barred for being filed outside of the limitations period for filing a RCr 11.42 motion. Further, Harris's novel application of RCr 11.42, that filing an initial motion for post-judgment relief within the three-year period does not bar "supplemental" motions under RCr 11.42, is disingenuous.

RCr 11.42(3) requires that a motion under RCr 11.42 "shall state all grounds for holding the sentence invalid of which the movant has knowledge. Final disposition of the motion shall conclude all issues that could reasonably have been presented in the same proceeding."

The Kentucky Supreme Court has repeatedly interpreted this provision as barring successive RCr 11.42 motions. *See Fraser v. Commonwealth*, 59 SW.3d 448, 454 (Ky. 2001); *Crick v. Commonwealth*, 550 S.W.2d 534, 535 (Ky. 1997); and *Butler v. Commonwealth*, 473 S.W.2d 108, 109 (Ky. 1971). "The courts have much more to do

than occupy themselves with successive ‘reruns’ of RCr 11.42 motions stating grounds that have or should have been presented earlier.” *Hampton v. Commonwealth*, 454 S.W.2d 672, 673 (Ky. 1970), *citing Kennedy v. Commonwealth*, 451 S.W.2d 158, 159 (Ky. 1970). Thus, Harris’s motion is also procedurally barred as being a successive RCr 11.42 motion.

Finally, it is well-established that a motion under RCr 11.42 “is limited to the issues that were not and could not be raised on direct appeal.” *Hodge v. Commonwealth*, 116 S.W.3d 463, 467-68 (Ky. 2003). The instructions to the jury and the competency of Harris’s counsel are both issues that were known to Harris since 1996. Harris’s arguments addressing jury instructions should have been raised on direct appeal. Moreover, the ineffective assistance of counsel issues should have been raised in Harris’s first RCr 11.42 motion. Harris’s reliance on *Martin v. Commonwealth*, 207 S.W.3d 1 (Ky. 2006), is misplaced. In *Martin*, like the case *sub judice*, the motion for relief pursuant to RCr 11.42 was filed within three years of the final judgment. However, *Martin* does not allow a defendant to file a RCr 11.42 motion outside the statutory three-year limit absent one of the very limited statutory exceptions.

For the foregoing reasons, the judgment of the Boyle Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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