

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

NO. 2007-CA-000174-MR

RORY K. HILL

APPELLANT

v. APPEAL FROM HARDIN CIRCUIT COURT  
HONORABLE KELLY MARK EASTON, JUDGE  
INDICTMENT NO. 03-CR-00254

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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

PER CURIAM: In March 2004, Appellant, Rory K. Hill, was convicted in the Hardin Circuit Court of first-degree assault, two counts of second-degree wanton endangerment, first-degree trafficking in a controlled substance while in possession of a handgun, possession of a handgun by a convicted felon, and for being a second-degree persistent felony offender. He was sentenced to thirty years' imprisonment. On direct appeal, the

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<sup>1</sup>Senior Judge John W. 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.

Kentucky Supreme Court affirmed the convictions and sentence. *Hill v. Commonwealth*, 2004-SC-000563-MR (December 22, 2005).

In September 2006, Appellant filed a *pro se* RCr 11.42 motion claiming ineffective assistance of counsel. The Commonwealth did not respond and, on October 26, 2006, the trial court entered findings of fact and conclusions of law denying Appellant post-conviction relief. Appellant now appeals *pro se* to this Court claiming essentially that the trial court erred by not construing the Commonwealth's failure to respond to the RCr 11.42 motion as a concession of error. Similarly, Appellant argues that since the Commonwealth did not respond, the trial court erroneously served the function of the prosecutor in "dismissing" his motion. Finally, Appellant again claims that trial counsel was ineffective in failing to investigate Appellant's competency.

We have reviewed the record and find Appellant's claims wholly without merit. The Commonwealth is not required to file a response to an RCr 11.42 motion, *see Polsgrove v. Commonwealth*, 439 S.W.2d 776 (Ky. 1969), and the failure to do so in no way prohibits the trial court from denying relief. Further, as the trial court concluded, there is absolutely no evidence in the record to indicate that Appellant's competency was ever at issue. As such, we affirm the order of the trial court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Rory Hill, *Pro Se*  
Central City, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo  
Attorney General  
Frankfort, Kentucky

Clint Watson  
Assistant Attorney General  
Frankfort, Kentucky