

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1998-CA-000080-MR

JAMES FRANKLIN PAYTON, JR.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE STEPHEN P. RYAN, JUDGE  
ACTION NO. 88-CR-000345

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: GUDGEL, CHIEF JUDGE; GUIDUGLI AND MILLER, JUDGES.

MILLER, JUDGE: James Franklin Payton, Jr., brings this appeal from a November 14, 1997 order of the Jefferson Circuit Court. We affirm.

In February 1988, the Jefferson County Grand Jury indicted appellant upon the offense of trafficking in a controlled substance, cocaine; receiving stolen property over \$100.00; sale of or possession with intent to sell marijuana; and of being a persistent felony offender in the second degree. It appears that appellant entered into a plea agreement with the Commonwealth and pled guilty to the charges of trafficking in a

controlled substance, illegal possession of a controlled substance, and theft by unlawful taking under \$100.00. He was sentenced to a total of twenty years' imprisonment. In October 1997, appellant filed a *pro se* Rules of Criminal Procedure (RCr) 11.42 motion to vacate. Therein, the petitioner claimed that he did not knowingly and intelligently enter the guilty plea. Specifically, he claimed that the "drug test attached clearly shows that the substance **DID NOT** contain any controlled substance." On November 14, 1997, the circuit court denied appellant's RCr 11.42 motion without a hearing. This appeal followed.

Appellant contends that the circuit court committed reversible error by denying his RCr 11.42 motion without a hearing. Specifically, he contends that:

1. The attorney was ineffective for promising probation. The prejudice from his action resulted in the appellant being sentenced to 5 years, without the option to withdraw his plea agreement.
2. The attorney was ineffective for failing to file a motion in court or making an oral motion regarding the appellants option to withdraw his plea. The prejudice resulted in the appellant receiving [the] 5 year sentence without the option of withdrawing his plea.
3. The attorney was ineffective for allowing the consolidation of 88-0345 and 89-0290. This was probably the reason the court denied the probation and ordered incarceration instead of probation.
4. The attorney was ineffective for coercing the appellant to plead guilty. The attorney told the appellant is [sic] he didn't plead guilty the commonwealth would introduce evidence (even if it was false) to convict him. The prejudice occurred when the

appellant believed him and plead [sic] guilty resting on incorrect advice.

A review of the record reveals that these issues were not brought in appellant's RCr 11.42 motion before the circuit court. Appellant raises these issues for the first time in this appeal. It is a well-established rule of law that an appellate court can review only issues presented to and ruled upon by the circuit court. See Brister v. Commonwealth, Ky., 439 S.W.2d 940 (1969). We are thus unable to reach the merits of this appeal, and, as such, summarily affirm same. Id.

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

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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