

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1998-CA-001234-MR

KEITH O. WADE

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE EDWIN A. SCHROERING, JR., JUDGE  
ACTION NO. 91-CR-0180

COMMONWEALTH OF KENTUCKY

APPELLEE

### OPINION

AFFIRMING APPEAL NO. 1998-CA-01234-MR

DENYING APPELLEE'S MOTION TO DISMISS

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BEFORE: BUCKINGHAM, KNOPF, MILLER, JUDGES.

MILLER, JUDGE: Keith O. Wade (appellant) brings this appeal from an April 17, 1998 opinion and order of the Jefferson Circuit Court. We affirm.

In July 1991, appellant was found guilty of trafficking in a controlled substance (cocaine), illegal possession of diazepam and possession of marijuana. He was sentenced to a total of seven years imprisonment and fined \$5,000.00. On April 3, 1993, Appellant filed a Ky. R. Crim. P. (RCr) 11.42 motion to vacate sentence alleging ineffective assistance of trial counsel.

Same was denied by a July 7, 1993 order of the Jefferson Circuit Court and was ultimately affirmed by this Court in Appeal No. 1995-CA-00093-MR.

On November 10, 1997, Appellant filed another RCr 11.42 motion to vacate alleging, once again, ineffective assistance of trial counsel. The motion was denied by the circuit court, thus prompting the instant appeal.

On November 20, 1998, appellee tendered to this Court a motion to dismiss appeal. Therein, appellee alleged that appellant's RCr 11.42 motion was duplicitous, and as such, the appeal should be dismissed. By a February 9, 1999 order, the Commonwealth's motion to dismiss was passed to this panel for disposition.

Having considered Commonwealth's motion to dismiss Appeal No. 1998-CA-001234-MR, and being sufficiently advised, it is hereby **ORDERED** that the motion to dismiss be and is hereby **DENIED**.

We shall now turn to consideration of appellant's RCr 11.42 claims. Appellant contends that the circuit court committed reversible error by denying his RCr 11.42 motion. Appellant's specific allegations are as follows:

[1.] Counsel was ineffective during the pre-trial stage when appellant was indicted by an illegally impaneled grand jury.

[2.] Counsel's performance was deficient prior to trial when he failed to move for production of the informant.

[3.] Counsel failed to object to the use of hearsay testimony used at the suppression [sic] hearing and was thus ineffective.

[4.] Counsel failed to object to the display of a handgun during trial that no one was charged with.

[5.] Counsel's performance during the suppression hearing in challenging the validity of the search warrant was deficient.

[6.] Appellant's counsel was ineffective at the close of the trial when he failed to make a request for limited instruction regarding co-defendant's statement implicating appellant that "all you got on us is possession."

We believe it well established that a successive RCr 11.42 motion will be summarily denied unless it alleges grounds that were not or could not have been asserted in the original RCr 11.42 motion. Case v. Commonwealth, Ky., 467 S.W.2d 367 (1971) and Hampton v. Commonwealth, Ky., 454 S.W.2d 672 (1970). Upon review of the record, we cannot say that the instant RCr 11.42 motion presented grounds that were not or could not have been asserted in appellant's previous RCr 11.42 motion. In fact, appellant does not even allege same. Hence, we summarily affirm the circuit court's denial of appellant's RCr 11.42 motion.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

Keith O. Wade, Pro Se  
LaGrange, KY

BRIEF FOR APPELLEE:

A. B. Chandler III  
Attorney General  
and  
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