

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2001-CA-000512-MR

RODNEY GRIMES

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE GEOFFREY P. MORRIS, JUDGE  
INDICTMENT NO. 95-CR-001675

COMMONWEALTH OF KENTUCKY

APPELLEE

### OPINION

### AFFIRMING

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BEFORE: GUDGEL, Chief Judge; GUIDUGLI and HUDDLESTON, Judges.

HUDDLESTON, Judge: Rodney Grimes appeals pro se from a Jefferson Circuit Court order denying his Kentucky Rules of Criminal Procedure (RCr) 11.42 motion to vacate, set aside or correct his sentence which was imposed after he reached an agreement with the Commonwealth pursuant to which he pled guilty to the murder of Darron Ellis in exchange for a twenty-five year term of imprisonment. As evidenced by the discussion below, the dispositive issue on appeal is whether Grimes's RCr 11.42 motion was filed within the applicable time limit.

On May 25, 1994, Grimes, then a juvenile, fatally shot Ellis one time in the chest with a semi-automatic handgun. At the time of the shooting, the two males were engaged in an argument regarding an attack on Grimes's brother which allegedly occurred a few hours earlier. Grimes's case was transferred to circuit court because he was classified as a youthful offender due to the fact that he was over the age of fourteen at the time he engaged in the commission of a capital offense. Grimes was represented by the public defender assigned to his case at subsequent proceedings. Following a psychiatric evaluation, hospitalization was recommended for Grimes and the court granted Grimes's motion to permit his hospitalization on September 16, 1994, noting that all treatment was to be in a secure facility. At all other times, he was remanded to the custody of the Jefferson County Youth Center.

On July 12, 1995, Grimes was indicted for murder by the circuit court grand jury and he subsequently pled not guilty at his arraignment where he was represented by counsel. Grimes later withdrew his plea of not guilty and entered into the plea agreement referenced above which the court accepted in an order entered on August 25, 1995, after determining that it was entered into knowingly and voluntarily. Having reviewed the pre-sentence investigation report and considered the nature and circumstances of the crime and the character and condition of Grimes, the court denied probation in a judgment and conviction order entered on September 22, 1995. In so doing, the court determined that granting probation would unduly depreciate the seriousness of the crime and that Grimes could be treated most effectively at a

correctional institute. Grimes was then sentenced as a youthful offender in accordance with Kentucky Revised Statutes (KRS) 640.030 to a term of twenty-five years in the penitentiary.

On the same day, an interim commitment order was entered by the court, pursuant to which Grimes was committed to the custody of the Kentucky Cabinet for Human Resources until his eighteenth birthday (October 11, 1996), with Grimes scheduled to appear before the court for final sentencing on October 16, 1996. In addition, the court ordered the Cabinet to secure appropriate placement for Grimes outside the youth center in a facility or program operated by the Cabinet by September 19, 1995. Grimes was subsequently placed at the Central Kentucky Treatment Center, a residential treatment facility operated by the Cabinet in Louisville, Kentucky.

In April 1996, citing his age and claiming that Grimes had assaulted other juvenile residents at the facility, tested positive for marijuana and received numerous incident reports for other such behavior, the Cabinet requested that Grimes be committed to the Kentucky Department of Corrections prior to his eighteenth birthday to serve the remainder of his sentence. Following a hearing at which Grimes was present and represented by counsel, the Cabinet's motion was granted by the court in an order entered on April 23, 1996. In determining that commitment was appropriate, the court found, based on a preponderance of the evidence, that Grimes had engaged in violent behavior which injured or endangered the life or health of another youthful offender or staff members at the facility, caused disruption by encouraging other residents to engage in similar conduct and established a pattern of disruptive

behavior in violation of the policies and procedures of his treatment program.

On October 16, 1996, Grimes appeared before the court as previously ordered and was sentenced to twenty-five years in the penitentiary with credit for time served. On May 2, 1997, Grimes's motion for shock probation was denied. In response to a subsequent motion by Grimes wherein he requested that the court award him credit for the one year, ten months and twenty-eight days he spent at the youth center prior to the commencement of his prison sentence, the court concluded that Grimes was entitled to credit for the time he spent in custody prior to being sent to prison on April 23, 1996, beginning with the day he was sent to the youth center on May 25, 1994. Accordingly, the court ordered the Division of Probation and Parole to recalculate the time.

On January 22, 2001, Grimes filed a RCr 11.42 motion with the court, sought permission for leave to proceed in forma pauperis and also requested appointment of counsel. The court summarily denied the RCr 11.42 motion in an order entered on February 15, 2001, saying only: "Denied-not filed timely-no [CR] 60.02 issues."

Likewise, the related motions were denied without elaboration on January 24, 2001. Grimes filed a notice of appeal and in an order entered on March 8, 2001, the court granted Grimes's motion for leave to proceed in forma pauperis with an appeal, denied the motion for appointment of a public defender and waived any court costs associated with the appeal.

As indicated earlier, the judgment of conviction in Grimes's case was entered on September 22, 1995, and his RCr 11.42

motion was not filed until January 22, 2001. In relevant part, RCr 11.42 provides that:

(10) 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. (Emphasis supplied.)

\* \* \*

If the motion qualifies under one of the foregoing exceptions to the three year time limit, the motion shall be filed within three years after the event establishing the exception occurred.

This amendment to the rule became effective on October 1, 1994. Since Grimes's conviction became final after the rule was adopted in the form set forth above, the time constraints therein necessarily governed his RCr 11.42 motion. Accordingly, Grimes had until September 22, 1998, to file a motion to vacate, set aside or correct his sentence. It is undisputed that he failed to meet that deadline. The Kentucky Supreme Court recently addressed the question of whether deviation from the three-year limitation found

in RCr 11.42 is permissible and answered in the negative.<sup>1</sup> We must do the same. As Grimes did not file his RCr 11.42 motion in a timely manner, we are precluded from addressing the merits of his argument. The order denying Grimes's motion for RCr 11.42 relief is, therefore, affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

Albert B. Chandler III  
Attorney General

Perry T. Ryan  
Assistant Attorney General  
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<sup>1</sup> See Baze v. Comm., Ky., 23 S.W.3d 619 (2000).