

RENDERED: July 8, 2005; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000204-MR
AND
NO. 2003-CA-001419-MR

WESTLEY D. SINGLETON

APPELLANT

v. APPEAL FROM ROCKCASTLE CIRCUIT COURT
HONORABLE DANIEL J. VENTERS, JUDGE
ACTION NO. 01-CR-00027

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

(1)AFFIRMING APPEAL NO. 2003-CA-000204-MR
(2) REVERSING AND REMANDING APPEAL NO. 2003-CA-001419-MR

** ** * * *

BEFORE: KNOPF, TAYLOR, AND VANMETER, JUDGES.

TAYLOR, JUDGE: Westley D. Singleton brings Appeal No. 2003-CA-000204-MR from a November 15, 2002, Order and brings Appeal No. 2003-CA-001419-MR from a June 12, 2003, Order of the Rockcastle Circuit Court; both orders denied Ky. R. Crim. P. (RCr) 11.42 motions to vacate. We affirm Appeal No. 2003-CA-000204-MR and reverse and remand Appeal No. 2003-CA-001419-MR.

Appellant was indicted upon the charges of wanton endangerment in the first degree, fleeing and evading police in the first degree, escape in the second degree, and being a persistent felony offender in the second degree. On the day of trial, appellant pled guilty to all charges without the benefit of a plea agreement. By judgment entered September 15, 2001, the circuit court sentenced appellant to a total of twelve years' imprisonment.

On September 13, 2002, appellant filed a motion to vacate judgment pursuant to RCr 11.42. The motion was not verified by appellant. By order entered November 15, 2002, the circuit court denied the RCr 11.42 motion and stated as follows:

First of all, RCr 11.42(2) requires that the motion be signed and verified by the movant. Mr. Singleton did not swear to the truth of the statements made in his motion to vacate the Judgment, and therefore his motion must be dismissed.

Looking to the merits of his claim, however, the Court finds further reason to deny his motion without an evidentiary hearing. . . .

Appellant filed Appeal No. 2004-CA-000204-MR from the November 15, 2002 order.

On February 12, 2003, appellant filed in the circuit court a "Renewed Motion to Vacate Sentence Pursuant to RCr 11.42." This motion was verified by appellant. In the motion, appellant stated that the circuit court had summarily denied his

previous RCr 11.42 motion because appellant had not verified the motion as required by RCr 11.42(2). By order entered June 12, 2003, the circuit court denied appellant's subsequent RCr 11.42 motion by concluding that appellant "previously filed motions for the same relief." Appellant brings Appeal No. 2003-CA-001419-MR from the June 12, 2003, order denying his subsequent RCr 11.42 motion.

In Appeal No. 2004-CA-000204-MR, appellant argues that the circuit court erroneously denied his original RCr 11.42 motion without an evidentiary hearing. Appellant argues the substantive merits of the RCr 11.42 motion and fails to address the issue of the lack of verification. The circuit court denied appellant's original RCr 11.42 motion based upon appellant's failure to verify and, alternatively, upon the merits. The failure to verify an RCr 11.42 motion deprives the circuit court of jurisdiction to reach the merits of the motion. We, thus, conclude the circuit court properly dismissed appellant's original RCr 11.42 motion for failure to verify same.

In Appeal No. 2004-CA-001419-MR, appellant argues that the circuit court committed error by summarily denying his subsequent RCr 11.42 motion as successive. It is well-established that a subsequent RCr 11.42 motion raising errors that could have been raised in a previous RCr 11.42 motion should be summarily denied as a successive motion. Hampton v.

Commonwealth, 454 S.W.2d 672 (Ky. 1970). We, nevertheless, do not view appellant's subsequent RCr 11.42 motion as constituting a successive RCr 11.42 motion.

As to the original RCr 11.42 motion, appellant failed to verify the motion, thus depriving the circuit court of jurisdiction to reach the merits thereof. As previously stated, we believe the circuit court properly dismissed the original RCr 11.42 motion based upon appellant's failure to verify. We, however, believe it was error for the circuit court to reach the merits of the original RCr 11.42 motion, as it lacked jurisdiction to do so. As the circuit court lacked jurisdiction to consider the merits of the original RCr 11.42 motion, we do not consider appellant's subsequent RCr 11.42 motion to be a successive motion raising issues that could have been presented in the original motion. See id. The subsequent RCr 11.42 motion is the only motion that the circuit court had jurisdiction to consider on the merits. Accordingly, we hold the circuit court erred by summarily denying appellant's subsequent RCr 11.42 motion as successive.

For the foregoing reasons, Appeal No. 2004-CA-000204-MR is affirmed and Appeal No. 2004-CA-001419-MR is reversed and remanded for proceedings not inconsistent with this opinion.

ALL CONCUR.

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