

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2013-CA-000529-MR

CHRISTOPHER CHAVIES

APPELLANT

v.

APPEAL FROM LAUREL CIRCUIT COURT  
HONORABLE JOHN KNOX MILLS, JUDGE  
ACTION NO. 09-CR-00278

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DIXON, STUMBO, AND VANMETER, JUDGES.

VANMETER, JUDGE: Following a criminal conviction, a defendant's post-conviction avenues for relief are clearly delineated: first, relief must be sought by direct appeal, then by a motion pursuant to RCr<sup>1</sup> 11.42, and finally by a CR<sup>2</sup> 60.02 motion. The issue we must decide in this case is whether the Laurel Circuit Court

<sup>1</sup> Kentucky Rules of Criminal Procedure.

<sup>2</sup> Kentucky Rules of Civil Procedure.

erred in dismissing Christopher Chavies' RCr 11.42 motion on the basis that the grounds alleged should have been raised on direct appeal. We hold that the trial court did not err and therefore affirm.

In 2009, Christopher Chavies was charged with Manufacturing Methamphetamine, Receiving Stolen Property, and Persistent Felony Offender in the Second Degree ("PFO2"). Following a jury trial in which he was convicted of all counts, Chavies received a sentence of fifty years for the Methamphetamine charge as enhanced by the PFO2, and a sentence of ten years for the Receiving Stolen Property charge as enhanced by the PFO2. The sentences were to be served concurrently, for a total sentence of fifty years. The Kentucky Supreme Court affirmed Chavies' conviction on direct appeal. *Chavies v. Commonwealth*, 354 S.W.3d 103 (Ky. 2011).

Chavies filed his RCr 11.42 motion for post-conviction relief in June 2012. The trial court denied his motion without an evidentiary hearing and without appointing counsel. Chavies now appeals, raising the following issues: trial counsel was ineffective for allowing Chavies to be sentenced on PFO enhancement without following the procedural requirements of KRS<sup>3</sup> 532.060 and 532.080; trial counsel was ineffective for failing to object to the jury instructions and verdict forms provided by the trial court; trial counsel was ineffective for failing to object to mention of Chavies' prior offenses or charges that were amended down to lesser

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<sup>3</sup> Kentucky Revised Statutes.

offenses or dismissed; and the evidence was insufficient to support his convictions.<sup>4</sup>

Kentucky case law has long recognized that

The structure provided in Kentucky for attacking the final judgment of a trial court in a criminal case is not haphazard and overlapping, but is organized and complete. That structure is set out in the rules related to direct appeals, in RCr 11.42, and *thereafter* in CR 60.02. CR 60.02 is not intended merely as an additional opportunity to raise *Boykin* defenses. It is for relief that is not available by direct appeal and not available under RCr 11.42. The movant must demonstrate why he is entitled to this special, extraordinary relief. Before the movant is entitled to an evidentiary hearing, he must affirmatively allege facts which, if true, justify vacating the judgment and further allege special circumstances that justify CR 60.02 relief.

*Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983). The court in *Gross* explicitly set forth

the proper procedure for a defendant aggrieved by a judgment in a criminal case is to directly appeal that judgment, stating every ground of error which it is

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<sup>4</sup> Chavies filed a flurry of papers with the Laurel Circuit Court on June 26, 2012. As we read Chavies' Motion, his allegations to the trial court included 1) trial counsel's failure to request competency hearing; 2) trial court's failure to hold a competency hearing; 3) prosecutorial misconduct; 4) trial counsel's failure to investigate; 5) trial counsel's failure to request independent expert to test chemicals to prove they could be used to manufacture methamphetamine; 6) cumulative error; and 7) trial counsel's filing frivolous motion to suppress instead of a motion on other sufficient grounds. None of these grounds were addressed by the trial court, and Chavies raises none on appeal. In addition, Chavies filed a memorandum in support of his RCr 11.42 motion in which he argued the additional issues of 1) being sentenced in violation of KRS 532.060 in that the jury did not fix a sentence for the underlying charges prior to fixing an enhanced sentence for PFO2; and 2) his conviction for Manufacturing Methamphetamine was invalid absent a conviction of the lesser offense of Unlawful Possession of Methamphetamine Precursors. The trial court addressed these later two issues. Thus, Chavies' claims with respect to introduction of amended offenses in the penalty phase and insufficiency of the evidence were not presented to the trial court and are not properly considered by us now.

reasonable to expect that he or his counsel is aware of when the appeal is taken.

Next, we hold that a defendant is required to avail himself of RCr 11.42 while in custody under sentence or on probation, parole or conditional discharge, as to any ground of which he is aware, during the period when this remedy is available to him. Final disposition of that motion, or waiver of the opportunity to make it, shall conclude all issues that reasonably could have been presented in that proceeding. The language of RCr 11.42 forecloses the defendant from raising any questions under CR 60.02 which are “issues that could reasonably have been presented” by RCr 11.42 proceedings.

*Id.* at 857.

In this case, the grounds alleged by Chavies all related to issues that are properly raised on direct appeal: claimed procedural defects in PFO sentencing and in jury forms. The trial court did not err in denying Chavies’ motion without an evidentiary hearing or the appointment of counsel.

The Laurel Circuit Court’s order is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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