

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2013-CA-001905-MR

DEANGELO COLLINS

APPELLANT

v.

APPEAL FROM GRAVES CIRCUIT COURT  
HONORABLE TIMOTHY C. STARK, JUDGE  
ACTION NOS. 06-CR-00254 & 06-CR-00288

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: D. LAMBERT, THOMPSON, AND VANMETER, JUDGES.

VANMETER, JUDGE: DeAngelo Collins appeals the Graves Circuit Court's denial of his second RCr<sup>1</sup> 11.42 motion which alleged that a newly found constitutional right would allow him post-conviction relief. Because Collins's claims are time-barred, we affirm.

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

Collins is currently serving consecutive sentences after pleading guilty to multiple drug charges in 2007. His first RCr 11.42 motion, made *pro se*, alleged ineffective assistance of counsel by coercion into the pleas, prosecutorial misconduct, and cumulative effects prejudice. This motion and the appeal were denied. Pursuant to the exception for a newly found constitutional right, Collins filed his second RCr 11.42 motion, still *pro se*, four years after *Arizona v. Gant*, 556 U.S. 332, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009) was decided by the Supreme Court; he also again asserted ineffective assistance of counsel in advising him to enter the guilty pleas. The trial court denied his motion for being untimely. The trial court went on to note that it believed Collins had entered his pleas knowingly and willingly and the court was unconvinced that *Gant* applied. This appeal follows.

Collins first argues that the trial court erred in denying his RCr 11.42 motion for failing to consider and apply *Gant*. Collins was stopped and arrested as a suspect to a crime<sup>2</sup> and, while in custody, a search of his car revealed drug paraphernalia. Collins argues that under the new standard set by *Gant* this search was unconstitutional. We need not address the legality of the search because the claim is procedurally barred.

Two exceptions allow a movant to file a RCr 11.42 motion after the initial three-year deadline; Collins has filed his motion pursuant to the second exception, alleging that a new and relevant constitutional right that applies retroactively has

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<sup>2</sup> Collins was later confirmed *not* to be the perpetrator of this crime.

been established. RCr 11.42(10)(b). However, the trial court did not need to analyze the merits of Collins's argument because the motion was untimely. "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." RCr 11.42(10). *Gant*, the "establishing event," was decided in April 2009 and Collins filed his motion in August 2013, making it sixteen months too late. For this reason, and because Collins failed to give any just cause for the delay, the trial court did not err in denying his motion.

Collins next claims that the trial court erred in finding that his guilty pleas were entered knowingly and voluntarily due to his counsel's advice that the search of his car was legal. He also claims the trial court erroneously found that he was notified of waiving his right to appeal upon entering the pleas. Because these issues were raised and ruled upon in his first RCr 11.42 motion or the facts upon which Collins relies to make these claims were known at the time of his first motion, they are barred from being raised again. The rule prohibiting successive motions is governed by RCr 11.42(3) and *Gross v. Commonwealth*, 648 S.W.2d 853 (Ky. 1983) under which movants are not permitted to raise issues that were known or should have been known through the exercise of due diligence before filing their first motion. "Final disposition of [an 11.42] motion, or waiver of the opportunity to make it, shall conclude all issues that reasonably could have been presented in that proceeding." *Gross*, 648 S.W.2d at 857; *see also McQueen v. Commonwealth*, 949 S.W.2d 70 (Ky. 1997) (holding that where ineffective

assistance of counsel issues were raised in an earlier RCr 11.42 motion, these issues cannot be raised again). Collins's remaining arguments are therefore untimely and thus barred.

Because his motion was filed a year late pursuant to the RCr 11.42(10)(b) exception and because criminal defendants are not entitled to successive post-conviction motions for issues that have been raised or should have been raised in the first motion, we affirm the Graves Circuit Court's order denying Collins's second RCr 11.42 motion.

ALL CONCUR.

BRIEF FOR APPELLANT:

DeAngelo Collins, Pro se  
Memphis, Tennessee

BRIEF FOR APPELLEE:

Jack Conway  
Attorney General of Kentucky

Taylor Payne  
Assistant Attorney General  
Frankfort, Kentucky