

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2014-CA-002021-MR

RONDALE LAMONT MCCANN

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE KIMBERLY N. BUNNELL, JUDGE  
ACTION NO. 04-CR-01236

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: J. LAMBERT, MAZE, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Rondale Lamont McCann brings this *pro se* appeal from a November 24, 2014, Opinion and Order of the Fayette Circuit Court denying his Kentucky Rules of Criminal Procedure (RCr) 11.42 motion without an evidentiary hearing. We affirm.

On October 12, 2004, appellant was indicted by the Fayette County Grand Jury upon trafficking in a controlled substance in the first degree and with operating a motor vehicle on a suspended license. Pursuant to a plea agreement with the Commonwealth, appellant pleaded guilty to possession of a controlled substance in the first degree, and the Commonwealth recommended a sentence of one-year imprisonment. By Final Judgment entered January 20, 2005, appellant was formally sentenced to one-year imprisonment.

Some nine years later on November 10, 2014, appellant filed a *pro se* RCr 11.42 motion seeking to set aside his guilty plea based upon ineffective assistance of counsel. By Opinion and Order entered November 24, 2014, the circuit court denied appellant's RCr 11.42 motion without an evidentiary hearing. This *pro se* appeal follows.

Appellant contends that the circuit court committed reversible error by denying his RCr 11.42 motion without an evidentiary hearing. For the following reasons, we disagree.

RCr 11.42(10) provides:

(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.

Under RCr 11.42(10), a defendant has three years from a judgment's finality to file an RCr 11.42 motion. RCr 11.42(10)(a) and (b) provide exceptions to this general rule of limitation and operate to toll the three-year limitation period.

In this case, the final judgment sentencing appellant to one-year imprisonment was entered January 20, 2005, and appellant did not pursue a direct appeal of this final judgment. Thus, under RCr 11.42(10), the judgment became final on January 20, 2005, and appellant had three years from January 20, 2005, to timely file an RCr 11.42 motion. *See Palmer v. Commonwealth*, 3 S.W.3d 763 (Ky. App. 1999). The record plainly demonstrates that appellant failed to do so and filed the RCr 11.42 motion some nine years later on November 10, 2014. Appellant has not claimed or demonstrated entitlement to any of the tolling provisions provided in RCr 11.42(10)(a) or (b). Rather, appellant argues that the time limitation of RCr 11.42(10) should be equitably tolled. We, however, do not believe that appellant has stated facts entitling him to such relief. *See Moorman v. Commonwealth*, \_\_\_\_ S.W.3d \_\_\_\_ (Ky. 2016). Therefore, we are of the opinion that appellant failed to timely file his RCr 11.42 motion and that the motion is time-barred by operation of RCr 11.42(10). For this reason, we hold the circuit court properly denied appellant's RCr 11.42 motion without an evidentiary hearing.

For the foregoing reasons, the Opinion and Order of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Rondale Lamont McCann, *pro se*  
Terre Haute, Indiana

BRIEF FOR APPELLEE:

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