

RENDERED: November 14, 1997; 2:00 p.m.
 NOT TO BE PUBLISHED

No. 97-CA-000278-MR

JAMES D. MURRAY

APPELLANT

v. APPEAL FROM HART CIRCUIT COURT
HONORABLE LARRY D. RAIKES, JUDGE
INDICTMENT NO. 94-CR-000069

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AND ORDER

* * * * *

BEFORE: BUCKINGHAM, GUDGEL and HUDDLESTON, JUDGES.

HUDDLESTON, JUDGE. This is an appeal from an order of Hart Circuit Court denying Murray's Ky. R. Crim. Proc. (RCr) 11.42 motion to vacate his sentence on the ground that he received ineffective assistance of counsel.

Murray was charged with four counts of first-degree trafficking in a controlled substance. Upon the advice of counsel, he entered a plea of guilty to the first two counts of the indictment and the other two counts were dismissed. Murray was sentenced to three years in prison on each of the two counts and the sentences were run concurrently.

Murray's RCr 11.42 motion was filed while he was incarcerated at the Kentucky State Reformatory at LaGrange, Kentucky. On August 1, 1997, subsequent to the filing of Murray's

brief and the Commonwealth's brief on appeal, Murray, having served out his sentence, was discharged from custody.

RCr 11.42 relief is available to "[a] prisoner in custody under sentence or a defendant on probation, parole or conditional discharge who claims a right to be released on the ground that the sentence is subject to collateral attack" RCr 11.42(1). Since Murray has been released from custody and is not on probation, parole or conditional discharge, the issues raised in his RCr 11.42 motion are moot. Therefore, it is ORDERED that Murray's appeal be and it is hereby dismissed.

ALL CONCUR.

ENTERED: November 14, 1997

/s/ Joseph R. Huddleston
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

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