

RENDERED: March 13, 1998; 10:00 a.m.
NOT TO BE PUBLISHED

NO. 97-CA-1694-MR

REGINALD VADEN

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE KEN G. COREY, JUDGE
ACTION NOS. 92-CR-3336 & 93-CR-1113

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

* * *

BEFORE: BUCKINGHAM, GARDNER, AND SCHRODER, JUDGES.

SCHRODER, JUDGE. Reginald Vaden appeals pro se from an order of the Jefferson Circuit Court denying his motion for relief under Kentucky Rule of Criminal Procedure (RCr) 11.42 and Kentucky Rule of Civil Procedure (CR) 60.02 without a hearing. He challenges the merits of his conviction for trafficking in a controlled substance, the validity of his guilty plea, and the effectiveness of his counsel. Finding that Vaden's claims for relief are barred because of his guilty plea and previous RCr 11.42 motion, we affirm.

The following facts are taken from the opinion rendered in Vaden's earlier appeal, 94-CA-2722:

Reginald Vaden was charged with and subsequently indicted by the Jefferson County

Grand Jury for conspiracy to traffic in a controlled substance I (cocaine), trafficking in marijuana, possession of a handgun by a convicted felon, illegal use or possession of drug paraphernalia and being a persistent felony offender, second degree. The events giving rise to the circumstances surrounding the indictment occurred during the fall of 1992.

On May 17, 1994, with his second counsel of record, appellant filed a motion to enter a guilty plea. Both defense counsel and appellant signed the Commonwealth's offer on plea of guilty. The plea was accepted and on July 11, 1994, a judgment of conviction and sentence was entered. Thereafter, on October 6, 1994, the appellant, pro se, filed a motion to vacate, set aside, or correct sentence and judgment[,] alleging entrapment and ineffective assistance of counsel. The motion was denied November 4, 1994.

In his first RCr 11.42 motion and appeal, Vaden argued that he received ineffective assistance of counsel. A panel of this Court affirmed the circuit court decision in an unpublished opinion which became final on April 7, 1997. Although there is no motion in the record, Vaden apparently again moved for relief under RCr 11.42 and CR 60.02. The circuit court denied the motion in two orders, one entered on May 9, 1997, and the other on June 6, 1997. Vaden filed a notice of appeal on June 17, 1997, identifying the June 6 order.

On appeal, Vaden argues that he could not have been guilty of a conspiracy to traffick in cocaine because it was the police, not Vaden, who had the cocaine; that the police did not have probable cause to obtain a search warrant for his home; that his guilty plea was induced by threats of an improper persistent felony offender charge; that his guilty plea was invalid because

he was under the influence of cocaine; and that he received ineffective assistance of counsel. Because of the procedural history in this case, we do not reach the merits of any of his claims.

A valid guilty plea waives all defenses except that the indictment charged no offense. Hughes v. Commonwealth, Ky., 875 S.W.2d 99, 100 (1994). An RCr 11.42 motion "shall state all grounds for holding the sentence invalid of which the movant has knowledge. Final disposition of the motion shall conclude all issues that could reasonably have been presented in the same proceeding." RCr 11.42(3). Thus, successive motions under RCr 11.42 are barred. Commonwealth v. Ivey, Ky., 599 S.W.2d 456, 458 (1980). CR 60.02 is for relief that is not available by direct appeal or under RCr 11.42, and the movant must demonstrate why he is entitled to this extraordinary relief. Gross v. Commonwealth, Ky., 648 S.W.2d 853, 856 (1983). RCr 11.42 forecloses a defendant from raising any questions under CR 60.02 which are issues that could have been presented by RCr 11.42 proceedings. Id. at 857. See also Alvey v. Commonwealth, Ky., 648 S.W.2d 858 (1983).

The indictment charging Vaden with conspiracy charged an offense. "[I]t is not a valid defense that his co-conspirator, a police agent, did not truly agree to the conspiracy." Commonwealth v. Seago, Ky., 872 S.W.2d 441, 443 (1994). Vaden waived his right to challenge the existence of a conspiracy and the validity of the search warrant when he pleaded

guilty. His remaining arguments in this appeal either were, or should have been, raised in his earlier motion under RCr 11.42. Ivey, supra. Thus, he is neither entitled to relief under his current RCr 11.42 motion, nor has he demonstrated that he is entitled to extraordinary relief under CR 60.02. Gross, supra.

For the foregoing reasons, the decision of the circuit court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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