

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1998-CA-001866-MR

SCOTTY RAY LEPPARD

APPELLANT

v.

APPEAL FROM OWEN CIRCUIT COURT  
HONORABLE FRANK TRUSTY, JUDGE  
ACTION NO. 89-CR-00010

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: EMBERTON, GUIDUGLI AND MILLER, JUDGES.

GUIDUGLI, JUDGE. This is a pro se appeal by Scotty Ray Leppard, Jr. (Leppard) from an order of the Owen Circuit Court denying his motion for leave of court to file a successive RCr 11.42 post-conviction motion and his motion for subsequent RCr 11.42 post-conviction relief. We affirm.

Leppard's successive motions continue to be based upon the same alleged errors. Leppard has litigated this same alleged error, namely, his "excessive sentence", at least seven (7) times. A brief rendition of the procedural history will point

out this fact. On August 15, 1989, following a jury trial, Leppard was found guilty of the following offenses:

1. Two counts of complicity to trafficking in LSD;
2. Trafficking in tunial; and
3. Being a first-degree persistent felony offender (PFO I).

That same day the Owen Circuit Court sentenced Leppard to twelve (12) years on each count of complicity to trafficking in LSD and to ten (10) years on trafficking in tunial. The trial court ran said sentences consecutively for a total of thirty-four (34) years.

Leppard appealed the conviction directly to the Kentucky Supreme Court and alleged that he was erroneously denied a motion for mistrial and that he was erroneously convicted of being a PFO I. On January 17, 1991, the Kentucky Supreme Court affirmed the conviction and sentence in a unanimous opinion. On July 16, 1991, Leppard filed a motion, with supporting memorandum, for an evidentiary hearing and to vacate or set aside the conviction and sentence pursuant to RCr 11.42. Leppard alleged five errors in this motion, the only one pertinent to the appeal sub judice is the allegation of ineffective assistance of counsel for failure to object to the alleged excessive sentence. On August 9, 1991, the trial court denied Leppard's motion and that decision was affirmed by this Court in an unpublished opinion on July 13, 1992.

In August of 1992, Leppard filed a federal habeas corpus petition in the United States District Court at Frankfort,

arguing his sentence exceeded the maximum sentence allowed by statute. The Federal District Court dismissed said petition with prejudice on August 9, 1993. Leppard appealed that decision to the United States Court of Appeals for the Sixth Circuit, which rejected his argument on March 28, 1994. Thereafter, Leppard filed a petition for state habeas corpus relief in the Owen Circuit Court. The trial court rejected Leppard's argument on April 24, 1995. Said ruling was affirmed by this Court and motion for discretionary review was denied by the Kentucky Supreme Court on October 11, 1995.

On September 19, 1996, Leppard filed a motion for relief pursuant to CR 60.02(f) and CR 60.03 in the Owen Circuit Court. Leppard again claimed he was entitled to re-sentencing because his 34-year sentence exceeded the maximum sentence allowed by statute. On October 7, 1996, and November 19, 1996, the trial court entered orders rejecting Leppard's arguments. That decision was affirmed by this Court in an unpublished opinion on April 21, 1998. On June 23, 1998, Leppard filed motions for leave of court to file a successive RCr 11.42 post-conviction motion and for RCr 11.42 post-conviction relief in Owen Circuit Court. Again, his "excessive sentence" argument was the central issue. The trial court entered an order on July 14, 1998, denying Leppard's motion. This appeal followed.

In pertinent part, RCr 11.42 provides that "[f]inal disposition of the motion shall conclude all issues that could reasonably have been presented in the same proceeding." "Subsection (3) of RCr 11.42 was intended to protect the courts

against the abuse and vexation of successive proceedings to vacate the same judgment...." Warner v. Commonwealth, Ky. App., 398 S.W.2d 490 (1966). See also, Kennedy v. Commonwealth, Ky., 451 S.W.2d 158 (1970); Reado v. Commonwealth, Ky. App., 408 S.W.2d 438 (1966); Tipton v. Commonwealth, Ky. App., S.W.2d 493 (1966). Pursuant to the criminal rules and long standing case law, this Court does not believe Leppard's most recent appeal merits additional review. The issue raised already has been ruled upon numerous times. "The courts have much more to do than occupy themselves with successive 'reruns' of RCr 11.42 motions stating grounds that have or should have been presented earlier." Hampton v. Commonwealth, Ky. App., 454 S.W.2d 672, 673 (1970).

For the foregoing reasons, the order of the trial court is affirmed.

ALL CONCUR.

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