

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-000756-MR

FREDDIE HAYES

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE GARY D. PAYNE, JUDGE
ACTION NO. 1968-CR-07983

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, HUDDLESTON and KNOFF, Judges.

HUDDLESTON, Judge: Freddie Hayes appeals, pro se, from the denial of his post-conviction motion to vacate the sentences imposed following his conviction for Rape in the First Degree and Armed Robbery. Hayes is serving a life sentence and a ten-year sentence. He filed a motion under Ky. R. Crim. Proc. (RCr) 11.42 seeking to vacate his sentences on the ground that the trial judge failed to sign the judgment imposing them as required by RCr 11.04(3).

Hayes was convicted in 1970. His conviction was affirmed by the former Court of Appeals¹ on March 26, 1971. Thereafter, Hayes filed a RCr 11.42 motion seeking to set aside his conviction

¹ Now the Supreme Court.

on the ground that the trial court lacked jurisdiction to try him, and because he allegedly received ineffective assistance of counsel. His RCr 11.42 motion was denied, and on July 3, 1992, this Court affirmed that decision in a published opinion, Hayes v. Commonwealth, Ky. App., 837 S.W.2d 902 (1992).

On June 17, 1998, Hayes filed a Ky. R. Civ. Proc. (CR) 60.03 motion to vacate his conviction alleging, as he does in the present RCr 11.42 motion, that the trial judge failed to sign the judgment. On July 29, 1998, the trial court denied his motion. In an opinion rendered on August 13, 1999, this Court in appeal number 1998-CA-002034-MR, affirmed the denial of Hayes's CR 60.03 motion, holding that inasmuch as the trial judge had signed an order book containing the judgment, that act was sufficient to comply with RCr 11.42(3).

The issue raised in this appeal is precisely the same issue as that raised in appeal number 1998-CA-002034-MR. Furthermore, Hayes's present RCr 11.42 motion is a successive motion and it was subject to dismissal on that ground. RCr 11.42(3) provides that a post-judgment motion to vacate a sentence "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." See Shepherd v. Commonwealth, Ky., 477 S.W.2d 798 (1972); Crochrell v. Warren, Ky., 383 S.W.2d 377 (1964).

The order denying Hayes's RCr 11.42 motion is affirmed.
ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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