

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1999-CA-003127-MR

ALVIN MATNEY

APPELLANT

v. APPEAL FROM METCALFE CIRCUIT COURT  
HONORABLE BENJAMIN L. DICKINSON, JUDGE  
ACTION NO. 93-CR-00009

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: BARBER, KNOFF, AND TACKETT, JUDGES.

BARBER, JUDGE: Alvin Matney appeals from an order of the Metcalfe Circuit Court denying his motion to vacate, set aside or correct sentence brought pursuant to Kentucky Rule of Criminal Procedure (RCr) 11.42. Because the motion was filed outside of the time limitation, we affirm.

On October 17, 1993, Matney was involved in an altercation with his girlfriend, Roberta Lane, shortly after which she notified the police of the situation. When Matney returned to his residence, the police were there waiting to question him. Although the circumstances are not entirely clear,

Matney was arrested for wanton endangerment for allegedly attempting to hit a police officer with his vehicle, for terroristic threatening directed at the police, and for carrying a concealed deadly weapon, i.e., a hunting knife. In addition, a few days later, Lane swore out a criminal complaint against Matney for wanton endangerment for allegedly pointing a rifle at her during their argument.

On October 29, 1993, the Metcalfe County Grand Jury indicted Matney on two felony counts of wanton endangerment in the first degree (KRS 508.060), one misdemeanor count of terroristic threatening (KRS 508.080), and one misdemeanor count of carrying a concealed deadly weapon (KRS 507.020). Following negotiations between the parties, Matney entered a guilty plea on November 18, 1994, to all of the offenses pursuant to North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970). Consistent with the plea agreement, the Commonwealth recommended sentences of one year on each of the two wanton endangerment counts and twelve months on each of the two misdemeanor counts of terroristic threatening and carrying a concealed deadly weapon, all to run concurrently with each other and concurrently with the sentence Matney received on a previous conviction in the Kentucky federal district court, for a total sentence of one year. Matney waived preparation of a presentence investigation report and the circuit court sentenced him immediately to serve one year in prison on the four offenses consistent with the Commonwealth's recommendation.

On September 30, 1999, Matney filed a motion to vacate the judgment pursuant to RCr 11.42. In the motion, Matney argued the conviction was invalid because he was actually innocent of the offenses, the plea was not entered knowingly and voluntarily, and he had received ineffective assistance of counsel. Matney also requested appointment of counsel and an evidentiary hearing. On October 26, 1999, the circuit court entered an order and opinion denying the motion without a hearing. The Court held that Matney failed to show that defense counsel had rendered ineffective assistance or that the plea was entered without knowledge of the nature and consequences of the proceeding. The court also stated that by entering an Alford plea, his claim of actual innocence does not affect the validity of the plea. This appeal followed.

While we agree with the trial court that Matney's complaints lack substantive merit, we believe that his motion is barred on procedural grounds. In 1994, an amendment to RCr 11.42 created a three year time limitation for the filing of such motions. This amendment became effective as of October 1, 1994. Subsection 10 provides as follows:

(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.

If the judgment becomes final before the effective date of this rule, the time for filing the motion shall commence upon the effective date of this rule. If the motion qualifies under one of the foregoing exceptions to the three year time limit, the motion shall be filed within three years after the event establishing the exception occurred. Nothing in this section shall preclude the Commonwealth from relying upon the defense of laches to bar a motion upon the ground of unreasonable delay in filing when the delay has prejudiced the Commonwealth's opportunity to present relevant evidence to contradict or impeach the movant's evidence.

Matney was convicted and sentenced on November 18, 1994, on the two counts of first-degree wanton endangerment, terroristic threatening and carrying a concealed deadly weapon involved in his RCr 11.42 motion. Since his conviction occurred subsequent to the effective date of the amendment, Matney was obligated to file any RCr 11.42 challenging the convictions on or before October 1, 1997. RCr 11.42(10)(b). See, e.g., Palmer v. Commonwealth, Ky. App., 3 S.W.2d 763, 765 (1999) (stating that "final judgment" for purposes of RCr 11.42(10)(b) refers to the judgment of the trial court where no direct appeal is taken). Matney did not file his RCr 11.42 until September 1999, approximately two years beyond the three year time limitation imposed under the rule. Therefore, it was untimely and subject to dismissal by the circuit court. Matney has presented no argument or evidence indicating that either of the exceptions to the time limitation delineated in Subsection 10(a) or (b) would

apply in this case. Accordingly, Matney's RCr 11.42 motion was procedurally barred.

Even though the trial court addressed the merits of the motion, we have decided to affirm the order denying the motion on procedural grounds. See, e.g., Commonwealth, Natural Resources and Environmental Protection Cabinet v. Neace, Ky., 14 S.W.3d 15, 20 (2000) (stating appellate court may affirm judgment under alternate theory not relied upon by the trial court); Cooksey Brothers Disposal Co., Inc. v. Boyd Co., Ky. App., 973 S.W.2d 64, 70 (1997) (appellate court has authority to affirm trial court for reasons different than those stated in its judgment. Board of Education of McCreary Co. v. Williams, Ky. App., 806 S.W.2d 649, 650 (1991) (appellate court may affirm a correct trial court decision even if lower court reached decision through different reasoning).

For the foregoing reasons, we affirm the order of the Metcalfe Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Alvin Matney, *Pro Se*  
Manchester, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler III  
Attorney General

Rickie L. Pearson  
Assistant Attorney General  
Frankfort, Kentucky