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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001087-MR

JAN DEVONT BLYTHE

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. CLARK, JUDGE
ACTION NO. 02-CR-00977

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JOHNSON, KNOPF, AND VANMETER, JUDGES.

JOHNSON, JUDGE: Jan Devont Blythe, pro se, has appealed from an order of the Fayette Circuit Court entered on May 4, 2004, which dismissed his motion to vacate his sentence pursuant to RCr¹ 11.42. Having concluded that Blythe did not substantially comply with the requirements of RCr 11.42 in filing his motion, we affirm.

¹ Kentucky Rules of Criminal Procedure.

On September 16, 2002, Blythe was indicted by a Fayette County grand jury on two counts of burglary in the first degree,² one count of burglary in the second degree,³ and being a persistent felony offender in the first degree (PFO I).⁴ On October 25, 2002, Blythe filed a waiver of further proceedings with petition to enter a plea of guilty to all counts as charged in the indictment. On October 30, 2002, the trial court entered a judgment accepting his guilty plea. Blythe was sentenced on November 22, 2002, to ten years on count one of burglary in the first degree, ten years on count two of burglary in the first degree to run concurrently with count one, and five years for burglary in the second degree to run consecutively to the sentences for burglary in the first degree. His ten-year sentence on count one was enhanced to 20 years by virtue of his conviction for being a PFO I; thus, he received a total sentence of 25 years. He was further ordered to pay restitution in the amount of \$4,200.00.⁵

On December 5, 2002, Blythe filed a motion to reconsider sentence requesting his November 22, 2002, sentences be modified to run concurrently with each other and concurrently

² Kentucky Revised Statutes (KRS) 511.020.

³ KRS 511.030.

⁴ KRS 532.080(3).

⁵ The trial court also ruled that Blythe would not be eligible for probation.

with other sentences he was serving. The trial court denied the motion on December 12, 2002.

On June 6, 2003, Blythe, through counsel, filed a motion to vacate sentence pursuant to RCr 11.42. The Commonwealth responded on April 12, 2004,⁶ by filing a motion to dismiss, stating that Blythe's motion had not been signed and verified by him. The trial court agreed with the Commonwealth and dismissed Blythe's RCr 11.42 action on May 4, 2004. This appeal followed.

RCr 11.42(2) provides as follows:

The motion shall be signed and verified by the movant and shall state specifically the grounds on which the sentence is being challenged and the facts on which the movant relies in support of such grounds. Failure to comply with this section shall warrant a summary dismissal of the motion [emphasis added].

Further, our Supreme Court has held that RCr 11.42 requires substantial compliance in order to confer jurisdiction.⁷

In this case, Blythe's RCr 11.42 motion was signed by his attorney, but lacked his notarized signature verifying the motion. Therefore, we cannot reach the merits of Blythe's arguments because he has failed to substantially comply with the

⁶ There is no indication in the record as to why a ten-month delay occurred between the filing of Blythe's motion and the filing of the Commonwealth's motion to dismiss. However, it is noted that the motion was temporarily misplaced when filed and not entered into the record until April 28, 2004.

⁷ Cleaver v. Commonwealth, 569 S.W.2d 166, 169 (Ky. 1978).

requirement that an RCr 11.42 motion be signed and verified by the movant. The trial court had no other alternative but to dismiss the motion and did not err in doing so.

For the foregoing reasons, the order of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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