

RENDERED: OCTOBER 31, 2008; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2007-CA-001240-MR

MICHAEL JOE HENSLEY

APPELLANT

v. APPEAL FROM WHITLEY CIRCUIT COURT  
HONORABLE JERRY D. WINCHESTER, JUDGE  
ACTION NO. 04-CR-00133

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CAPERTON AND VANMETER, JUDGES; GUIDUGLI,<sup>1</sup> SENIOR JUDGE.

GUIDUGLI, SENIOR JUDGE: After a trial by jury, Michael Joe Hensley was convicted of possession of methamphetamine in violation of Kentucky Revised Statute (KRS) 218A.1432. He was also found to be in possession of a firearm in violation of KRS 218A.992 and his sentence was enhanced to a term of twenty

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<sup>1</sup> Senior Judge Daniel T. Guidugli sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

years. The Kentucky Supreme Court affirmed the convictions and sentence after a matter of right appeal. Hensley then filed a motion pursuant to Kentucky Rules of Criminal Procedure (RCr) 11.42 seeking to invalidate the convictions. That request was denied by the trial court and Hensley then sought a reconsideration of that ruling pursuant to Kentucky Rules of Civil Procedure (CR) 59.05, which was also denied.

Hensley then tendered a notice of appeal from the denial of his original RCr 11.42 motion and included a request to proceed *in forma pauperis*. The trial court denied the request, finding the required affidavit of indigence insufficient. Hensley then appealed that decision to this Court, where it was dismissed as being filed untimely. Then, on April 13, 2007, he filed a second RCr 11.42 motion with the trial court. That motion was overruled on April 27, 2007, and this appeal followed.

Although Hensley argues a number of issues in his brief, the only question before us is whether the trial court erred when it dismissed the successive RCr 11.42 motion without a hearing. We find no error and affirm the order of the Whitley Circuit Court.

“[W]hen a prisoner fails to appeal from an order overruling his motion to vacate judgment or when his appeal is not perfected or is dismissed, he should not be permitted to file a subsequent motion to vacate . . .” *Lycans v. Commonwealth*, 511 S.W.2d 232, 233 (Ky. 1974). We will not review duplicative

motions pursuant to RCr 11.42 “stating grounds that have or should have been presented earlier.” *Hampton v. Commonwealth*, 454 S.W.2d 672, 673 (Ky. 1970).

We find nothing in the record or Hensley’s second motion pursuant to RCr 11.42 that is new or which could not have been presented previously.

The judgment of the Whitley Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Michael Joe Hensley, *pro se*  
West Liberty, Kentucky

BRIEF FOR APPELLEE:

Jack Conway  
Attorney General of Kentucky

Ken W. Riggs  
Assistant Attorney General  
Frankfort, Kentucky