

Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-000250-MR

MICHAEL BUCHANAN

APPELLANT

v.

APPEAL FROM OHIO CIRCUIT COURT
HONORABLE RONNIE C. DORTCH, JUDGE
ACTION NO. 03-CR-00152

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: COMBS, CHIEF JUDGE; DIXON AND TAYLOR, JUDGES.

DIXON, JUDGE: Michael Buchanan, *pro se*, appeals from an order of the Ohio Circuit Court denying his motion to receive a copy of his court records. We affirm.

On April 8, 2004, Buchanan entered a guilty plea in Ohio Circuit Court to charges of murder, possession of a handgun by a convicted felon, and tampering with physical evidence, all arising from the shooting death of his wife.

The court thereafter sentenced Buchanan to an aggregate sentence of thirty-five years' imprisonment.

On April 21, 2006, Buchanan filed a motion for post-conviction relief pursuant to Kentucky Rules of Criminal Procedure (RCr) 11.42, alleging ineffective assistance of counsel. The trial court denied the motion and a panel of this Court affirmed that decision in an unpublished opinion.¹

On November 7, 2007, Buchanan filed a "Motion to Obtain a Certified Copy of the Complete and Accurate Court Record." According to his motion, Buchanan sought a lengthy list of evidence, pleadings, and records, free of charge. Buchanan asserted that he needed the records in order to prepare an RCr 11.42 motion alleging ineffective assistance of counsel. The trial court denied Buchanan's request without an evidentiary hearing. This appeal followed.

Buchanan argues that the court committed reversible error because, as an indigent, he was entitled to copies of his records free of charge. Buchanan further contends the court erred by refusing to hold an evidentiary hearing, and by denying his request for specific findings of fact. We conclude Buchanan's arguments are without merit.

Despite Buchanan's argument to the contrary, in a post-conviction collateral attack, an indigent defendant is only entitled to a free copy of the court record if he "files a sufficient motion under RCr 11.42[.]" *Jones v. Breslin*, 385 S.W.2d 71, 72 (Ky. 1964). Buchanan overlooks the fact that he has already filed

¹ *Buchanan v. Commonwealth*, 2006-CA-001367 (May 4, 2007). The Kentucky Supreme Court denied discretionary review on November 15, 2007.

one RCr 11.42 motion alleging ineffective assistance of counsel. At the time Buchanan requested the records in question, there was no motion for post-conviction relief pending in the trial court. Instead, Buchanan sought the documents in order to draft an impermissible, successive RCr 11.42 motion alleging issues that were raised or could have been raised in his earlier motion. RCr 11.42(3); *Hampton v. Commonwealth*, 454 S.W.2d 672, 673 (Ky. 1970).

Although Buchanan asserts that several of his constitutional rights have been infringed, it is well settled that “post-conviction discovery is not required by either the state or federal constitution.” *Sanders v. Commonwealth*, 89 S.W.3d 380, 394 (Ky. 2002). “[T]he stated purpose of [RCr 11.42] is to provide a forum for known grievances, not to provide an opportunity to research for grievances.” *Gilliam v. Commonwealth*, 652 S.W.2d 856, 858 (Ky. 1983). Consequently, Buchanan “is not permitted to fish through official records in hopes that something may turn up to his benefit.” *Foley v. Commonwealth*, 17 S.W.3d 878, 889 (Ky. 2000) (*overruled on other grounds by Stopher v. Conliffe*, 170 S.W.3d 307 (Ky. 2005)).

After reviewing the record, we conclude that Buchanan’s arguments are without merit. The trial court properly denied Buchanan’s motion for certified copies of his court records without an evidentiary hearing. Further, in its order, the court sufficiently set forth the basis for its denial of Buchanan’s motion so that additional findings were unnecessary.

For the reasons stated herein, the order of the Ohio Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Michael Buchanan, *Pro Se*
Burgin, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

Courtney J. Hightower
Assistant Attorney General
Frankfort, Kentucky