

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

NO. 2013-CA-000621-MR

BILLY MASH

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT  
HONORABLE CRAIG Z. CLYMER, JUDGE  
ACTION NO. 09-CR-00570

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
REVERSING AND REMANDING  
WITH DIRECTIONS

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BEFORE: DIXON, NICKELL, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Billy Mash brings this *pro se* appeal from a March 12, 2013, Order of the McCracken Circuit Court denying his Kentucky Rules of Criminal Procedure (RCr) 11.42 motion without an evidentiary hearing. We reverse and remand with directions to dismiss the motion before the circuit court.

Appellant was convicted upon one count of sodomy in the first degree. By Final Judgment/Sentence of Imprisonment entered on August 5, 2010, appellant was sentenced to twenty years' imprisonment. Appellant's conviction was affirmed on direct appeal to the Supreme Court of Kentucky by Opinion rendered March 22, 2012. *Mash v. Commonwealth*, 376 S.W.3d 548 (Ky. 2012). Thereafter, appellant filed the instant motion to vacate, set aside or correct his judgment and sentence of imprisonment pursuant to RCr 11.42. Appellant simultaneously filed a motion for evidentiary hearing. By order entered March 13, 2013, the circuit court denied the motion without an evidentiary hearing. This appeal follows.

Appellant contends that the circuit court erred by denying his RCr 11.42 motion. Specifically, appellant asserts that the circuit court erred by denying his motion upon the merits as the court was without jurisdiction to consider same. For the following reasons, we agree.

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.

The failure of a movant to verify an RCr 11.42 motion deprives the circuit court of jurisdiction to consider the merits of the motion and requires dismissal by the circuit court. *Cleaver v. Commonwealth*, 569 S.W.2d 166 (Ky. 1978).

In this case, appellant filed a motion pursuant to RCr 11.42 that was not verified as required by RCr 11.42(2). Without the verification required by RCr 11.42(2), the circuit court was without jurisdiction to consider the merits of appellant's motion. In its brief, the Commonwealth conceded that the circuit court was deprived of jurisdiction because appellant failed to properly verify the RCr 11.42 motion. Thus, we hold that the circuit court erred considering the merits of the motion, and upon remand, the circuit court is directed to dismiss appellant's RCr 11.42 motion.

For the foregoing reasons, the Order of the McCracken Circuit Court, is reversed and remanded with directions to dismiss the motion before the circuit court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Billy Mash, *Pro Se*  
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BRIEF FOR APPELLEE:

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