

RENDERED: DECEMBER 5, 2014; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2013-CA-002021-MR

BRYAN P. SCOTT

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE FREDERIC J. COWAN, JUDGE
ACTION NO. 06-CR-003519

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: CAPERTON, COMBS, AND VANMETER, JUDGES.

CAPERTON, JUDGE: The Appellant, Bryan Scott, entered into a plea agreement requiring him to register for twenty years as a sex offender. Scott now alleges, nearly seven years later, that the registry may not have been required for the type of crime of which he was convicted. Scott appeals an order from the Jefferson Circuit Court denying his motion under Kentucky Rules of Criminal Procedure

(RCr) 11.42, requesting that his sentence be vacated, set aside, or corrected.

Finding no error, we affirm.

Scott came under felony indictment in federal court in October 2006 for distribution of matter portraying a sexual performance by a minor. After it was agreed that the case should be prosecuted in Jefferson Circuit Court, Scott pled guilty to an amended misdemeanor charge of possession of matter portraying a sexual performance by a minor. Based on the plea agreement, the trial court sentenced Scott to twelve months to be discharged for two years on the condition that he register for twenty years as a sex offender, “even though the offense occurred before July of 2006.” This judgment and sentence was issued on October 30, 2006.

Scott filed a motion on August 27, 2013, to vacate, set aside, or correct the sentence under RCr 11.42. He argued that he did not know and was not properly advised of the law regarding whether he was required to register as a sexual offender. The trial court denied the motion on the basis that Scott’s claim was “time-barred by the three-year limitation contained in RCr 11.42(10).” Scott appeals this ruling.

RCr 11.42(10) states the following:

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.

Scott argues that at the time he entered into the plea agreement, he did not and could not, through exercise of due diligence, know the law as it applied to registration for sexual offenses. Scott provides no other “facts” that he claims were unknown to him at that time; his sole basis for an exception to the three-year limit under RCr 11.42(10) is that he “did not know or realize the technicalities of the Kentucky sex offender statutes and that he was not required to register based upon his offense of conviction.”

Even assuming this to be true, it does not afford Scott a basis for relief under RCr 11.42. In his motion before the trial court, Scott provided multiple affidavits, including that of his attorney during the trial, alleging that he was not properly advised of the law. But as noted by the trial court, Scott provides no authority to support his claim that “Kentucky’s sex registration ‘laws’ constitute ‘facts’ within the meaning of RCr 11.42(10).” Furthermore, “it is axiomatic that all persons are presumed to know the law.” *Midwest Mut. Ins. Co. v. Wireman*, 54 S.W.3d 177, 182 (Ky. App. 2001). Scott’s lack of knowledge regarding the law at the time he entered into his plea agreement cannot be the basis for an exception to the three-year limit imposed by RCr 11.42(10).

As the tolling of the statute of limitations in RCr 11.42 precludes the trial court from exercising jurisdiction outside the three-year period, *see Bush v.*

Commonwealth, 236 S.W.3d 621, 623 (Ky. App. 2007), the trial court properly denied Scott's motion.

The order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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