

RENDERED: NOVEMBER 9, 2017; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2015-CA-001744-MR

WILLIAM D. SLONE

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE JULIE REINHARDT WARD, JUDGE
ACTION NO. 10-CR-00204

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: J. LAMBERT, NICKELL, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: William D. Slone brings this *pro se* appeal from an October 26, 2015, Order denying his Kentucky Rules of Criminal Procedure (RCr) 11.42 motion without an evidentiary hearing. We affirm.

By an August 9, 2011, judgment, Slone was sentenced to a total of thirty-years' imprisonment upon a jury verdict adjudicating him guilty of first-

degree rape, first-degree sodomy and first-degree persistent felony offender. Slone directly appealed the August 9, 2012, judgment, and the Supreme Court affirmed the judgment in *Slone v. Commonwealth*, 382 S.W.3d 851 (Ky. 2012).

Thereafter, Slone filed numerous writs and motions seeking to vacate his thirty-year sentence of imprisonment. Relevant to this appeal, on January 22, 2013, Slone filed an RCr 11.42 motion to vacate his sentence of imprisonment. By order entered October 26, 2015, the circuit court denied the motion without an evidentiary hearing. The court pointed out that Slone had previously filed a previous RCr 11.42 motion on November 21, 2012, and that the court denied same by order dated January 17, 2013. The circuit court concluded that Slone's current RCr 11.42 motion was a successive RCr 11.42 motion and summarily denied the RCr 11.42 motion as successive. This appeal follows.

In his appellate brief, Slone specifically sets forth the following contentions of error:

1. The trial court abused its discretion when it granted the Commonwealth's motion for a continuance on the morning of trial.
2. The trial court erred to . . . Slone's substantial prejudice and denied him due process of law when it would not allow him to cross examine complaining witness Amanda Turner about her failure to appear for the February 1, 2011[,] trial date, and how her attendance was procured at the instant trial.
3. A mistrial was required when it was revealed during cross examination of SANE [sexual assault nurse examiner] Missy Rittinger that the final version of her report was not provided to the defense prior to trial.

4. The trial court erred to . . . Slone's substantial prejudice and denied him due process of law when (a) it failed to order a competency evaluation prior to the start of trial, and (b) once an outpatient competency evaluation was conducted prior to final sentencing, denied the defense request that . . . Slone be sent to KCPC [Kentucky Correctional Psychiatric Center] for further medical testing.

5. There is a sentencing error in this case.

Slone's Brief at 5, 9, 13, 17, and 24.

The above contentions advanced by Slone are that the trial court committed errors during the course of trial. An error allegedly made by the circuit court during trial rather than by trial counsel must be raised on direct appeal and is not proper for consideration in an RCr 11.42 motion. *Leonard v. Com.*, 279 S.W.3d 151 (Ky. 2009). Additionally, the record plainly reveals that this is Slone's second RCr 11.42 motion and, thus, constitutes a successive RCr 11.42 motion. *See Butler v. Com.*, 473 S.W.2d 108 (Ky. 1971). Upon the whole, we are of the opinion that the trial court properly denied Slone's RCr 11.42 motion without an evidentiary hearing.

For the foregoing reasons, the Order of the Campbell Circuit Court is affirmed.

ALL CONCUR.

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