

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

NO. 2016-CA-001821-MR

LONNIE HARRIS

APPELLANT

v.

APPEAL FROM CASEY CIRCUIT COURT  
HONORABLE JUDY D. VANCE, JUDGE  
ACTION NO. 00-CR-00059

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: D. LAMBERT,<sup>1</sup> MAZE, AND NICKELL, JUDGES.

LAMBERT, D., JUDGE: Lonnie Harris, acting *pro se*, appeals the summary denial of his motion for relief pursuant to RCr<sup>2</sup> 11.42. The Casey Circuit Court based its denial of Harris' motion on the fact that he had previously filed an

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<sup>1</sup> Judge Debra Hembree Lambert authored this opinion prior to her accepting election to the Kentucky Supreme Court effective January 7, 2019.

<sup>2</sup> Kentucky Rules of Criminal Procedure.

unsuccessful RCr 11.42 motion. Kentucky law prohibits successive motions asserting collateral attacks on convictions. Therefore, we find no error in the trial court's ruling, and accordingly affirm.

## **I. FACTUAL AND PROCEDURAL HISTORY**

Harris was convicted by a jury of first-degree burglary and felony theft by unlawful taking in January of 2001. The jury recommended, and the trial court imposed, a sentence of 20 years to serve. Thereafter, Harris moved the trial court for post-conviction relief pursuant to both CR<sup>3</sup> 60.02 and RCr 11.42. He alleged that his trial counsel had rendered ineffective assistance in failing to investigate the statements made to police by a crucial Commonwealth witness who recanted his testimony after the trial. The trial court summarily denied the motion.

Harris then appealed the trial court's denial to this Court, which affirmed on the issue of ineffective assistance, but reversed on the issue of CR 60.02 relief. The Kentucky Supreme Court granted discretionary review, and entered an opinion affirming in part, and reversing in part. *Commonwealth v. Harris*, 250 S.W.3d 637 (Ky. 2008). In that ruling, the Supreme Court affirmed this Court's ruling as to the RCr 11.42 issue, but reversed as it related to the 60.02 issue, ultimately reinstating the trial court's judgment of conviction. *Id.* at 643.

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<sup>3</sup> Kentucky Rules of Civil Procedure.

Harris again moved for RCr 11.42 relief on January 8, 2014, alleging that his trial counsel had rendered ineffective assistance in advising him not to accept an offer for a one-year sentence in exchange for a guilty plea. The trial court summarily denied the motion on the basis that the Supreme Court's opinion had already conclusively resolved the issue of ineffective assistance.

This appeal followed.

## II. ANALYSIS

RCr 11.42 permits defendants to obtain relief from judgment in instances where their counsel rendered prejudicially ineffective assistance. Generally, a defendant's entitlement to relief for counsel's ineffectiveness is measured using the test set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). *See also Gall v. Commonwealth*, 702 S.W.2d 37 (Ky. 1985).

However, before a trial court may reach the merits of a motion and apply *Strickland*, the motion must have been filed in compliance with RCr 11.42's strict procedural requirements. The rule requires that a movant bring all claims for relief for which the movant has knowledge, and that a failure to do so waives any basis for relief not presented. "The motion shall state all grounds for holding the sentence invalid of which the movant has knowledge. Final disposition of the

motion shall conclude all issues that could reasonably have been presented in the same proceeding.” RCr 11.42(3).

Requiring a movant to state all bases for relief serves the clear purposes of promoting efficiency of the process and finality of the disposition. That a movant may not attempt a second bite at the ineffective assistance apple is a well-settled matter in Kentucky jurisprudence. “

“Generally, a second such motion is not allowed.” *Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983) (describing Kentucky's “organized and complete” set of procedures “for attacking the final judgment of a trial court in a criminal case”); *McQueen v. Commonwealth*, 949 S.W.2d 70 (Ky. 1997) (affirming the denial of a successive RCr 11.42 motion).

*McDaniel v. Commonwealth*, 495 S.W.3d 115, 121 (Ky. 2016) (“In general, RCr 11.42 gives a person under sentence one, and only one, opportunity[.]”)

“[S]uccessive motions are barred by RCr 11.42(3).” *Fraser v. Commonwealth*, 59 S.W.3d 448, 454 (Ky. 2001) (citing *Butler v. Commonwealth*, 473 S.W.2d 108 (Ky. 1971)).

Harris argues that he is entitled to relief in light of the fact that the Supreme Court of the United States held in *Padilla v. Kentucky*, 559 U.S. 356, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010), and *Lafler v. Cooper*, 566 U.S. 156, 132 S.Ct. 1376, 182 L.Ed.2d 398 (2012), that prejudicial ineffective assistance may occur when counsel advises a client at the plea negotiation stage. In *Padilla*, the

Supreme Court held that giving inaccurate advice to a non-citizen defendant of possible deportation ramifications of a plea agreement amounted to ineffective assistance. *Id.* at 374. In *Lafler*, defense counsel advised his client to reject a plea based on an unfounded belief that the prosecution could not prove intent to murder because the victim was shot below the waist. Lafler rejected the prosecution's plea offer (which included a recommended sentence of 4-7 years) on counsel's advice and proceeded to trial, ultimately receiving a sentence of 15-30 years. *Lafler*, 566 U.S. at 162. The Court found the performance to have been deficient because "all parties agree the performance of respondent's counsel was deficient when he advised respondent to reject the plea offer on the grounds he could not be convicted at trial." *Id.* at 163. However, those cases are easily distinguishable in that neither movant had previously sought prior post-conviction relief for ineffective assistance of counsel.

It is beyond question that Harris previously sought RCr 11.42 relief. It is equally certain that he knew the facts comprising the substance of his current allegations before he filed his prior RCr 11.42 motion; thus, he asserts a prayer for relief which he could have asserted in his previous motion. His failure to assert the allegedly ineffective advice regarding the plea offer in the prior RCr 11.42 proceedings prohibits him from asserting it now. The trial court committed no error in denying Harris' motion for this fatal procedural defect.

### III. CONCLUSION

Having reviewed the record and finding no error, we hereby affirm the ruling of the Casey Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Lonnie Harris, *pro se*  
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Andy G. Beshear  
Attorney General of Kentucky

Gregory C. Fuchs  
Assistant Attorney General  
Frankfort, Kentucky