

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-001518-MR

DENNIS ADKINS

APPELLANT

v. APPEAL FROM BUTLER CIRCUIT COURT
HONORABLE DAN KELLY, SPECIAL JUDGE
ACTION NO. 10-CR-00001

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: LAMBERT, MAZE, AND TAYLOR, JUDGES.

MAZE, JUDGE: Dennis Adkins appeals the Butler Circuit Court's order denying his motion to vacate his judgment and sentence. After careful review, we affirm.

On November 13, 2012, Adkins pled guilty to one count of second-degree trafficking in a controlled substance, first offense. Final judgment was entered on November 20, 2012. On July 24, 2017, Adkins moved to vacate his

sentence pursuant to RCr¹ 11.42, alleging he received ineffective assistance of counsel. Adkins argued trial counsel should have moved to suppress evidence that he claimed the police obtained through an illegal trespass and by making untruthful statements on a search warrant affidavit. The trial court found the motion was untimely and denied Adkins relief without conducting an evidentiary hearing. This appeal follows.

A motion seeking to vacate a sentence pursuant to RCr 11.42 “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.” Adkins filed his RCr 11.42 motion more than four years after the trial court’s final judgment. The facts Adkins alleged would have supported a meritorious suppression motion could have been discovered through due diligence. Adkins has not alleged a violation of a fundamental constitutional right that was not established when final judgment was entered. The trial court correctly denied Adkins’s RCr 11.42 motion as untimely.

Accordingly, the order of the Butler Circuit Court is affirmed.

¹ Kentucky Rules of Criminal Procedure.

ALL CONCUR.

BRIEF FOR APPELLANT:

Dennis Adkins, *pro se*
Central City, Kentucky

BRIEF FOR APPELLEE:

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