

RENDERED: SEPTEMBER 13, 2019; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2017-CA-001794-MR

BRADLEY WILLIAMS

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT  
HONORABLE JOSEPH W. CASTLEN, III, JUDGE  
ACTION NO. 16-CR-00198

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DIXON, JONES AND K. THOMPSON, JUDGES.

THOMPSON, K., JUDGE: Bradley Williams appeals from the Daviess Circuit Court's order denying his motion to vacate and set aside his judgment and conviction or alternatively for equitable relief. Williams filed his motion pursuant to Kentucky Rules of Criminal Procedure (RCr) 11.42 and Kentucky Rules of Civil Procedure (CR) 60.02. The circuit court denied the RCr 11.42 portion of the

motion for being unverified and denied the CR 60.02 portion of the motion as being an improper mechanism for bringing an ineffective assistance of counsel claim and for otherwise being without merit.

In February 2016, the police were investigating two related reports: a report that Williams was having consensual sex with a minor whom he had impregnated and a missing person's report. An officer, upon finding victim living with Williams, interviewed Williams and victim and subsequently arrested Williams for third-degree rape. The officer's report on the citation form stated in relevant part:

Both [Williams and victim] stated at the time they met victim lied about her age and claimed to be an adult. The victim stated during the pregnancy she revealed her true age to [Williams]. The victim advised after the birth of the child . . . [in January 2015] she had consensual sex with [Williams] up and through her 16th birthday . . . [in August 2015]. [Williams] admitted to having intercourse with the juvenile knowing she was 15 years of age on more than one occasion[.]

Williams was thirty-one years of age when child was born.

Williams and his attorney consented for Williams to be charged with third degree rape<sup>1</sup> via information. Williams agreed to a plea agreement in which

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<sup>1</sup> Pursuant to Kentucky Revised Statutes (KRS) 510.060(1)(a), “[a] person is guilty of rape in the third degree when . . . [b]eing twenty-one (21) years old or more, he or she engages in sexual intercourse with another person less than sixteen (16) years old[.]” This constitutes a Class D felony. KRS 510.060(2).

he would plead guilty as charged in exchange for a one-year sentence to be served consecutively to a one-year sentence in another case. The trial court accepted Williams's plea and sentenced him in accordance with his plea agreement on February 5, 2017.

On September 22, 2017, Williams filed a motion to vacate or for equitable relief pursuant to RCr 11.42 and CR 60.02. Williams asserted that he believed victim was an adult because of the active deception of the victim and the actions of victim's family and the lack of action by victim's school: victim deceived him as to her age when they met and began dating, telling him she was eighteen years old; victim's parents and grandmother encouraged the relationship and permitted victim to move in with him without informing him she was a minor; victim previously dropped out of school and he did not believe she could drop out of school without parental permission unless she was at least sixteen years of age; and after he encouraged victim to re-enroll in school, school officials took no action even though they knew victim was living with him and was pregnant. Williams claimed he did not discover her age until victim filled out the forms for their child's birth certificate.

Williams argued he received ineffective assistance of counsel because his attorney, despite earlier telling him he had a viable defense to the charges and would likely be acquitted based on the deception of victim and her family,

wrongfully advised him to plead guilty. Williams also argued he received ineffective assistance of counsel because his attorney advised him that receiving conditional release with post-incarceration supervision and having to register as a sex offender were mere formalities rather than additional punishments. He argued if not for this misadvice he would not have pled guilty and would have gone to trial. Finally, Williams argued he did not intend to commit a crime and only committed one due to the deception of victim and her family. Therefore, it was inequitable for him to be convicted through a plea under these circumstances because by negotiating such a plea the Commonwealth failed in its obligations to deal fairly with him, see that the truth is disclosed and to ensure that justice prevails.

Williams signed a verification statement at the end of his motion but did not have it notarized. The circuit court denied Williams's ineffective assistance of counsel claim on the basis that the portion of his motion brought pursuant to RCr 11.42 was deficient for lack of proper verification because Williams's signature lacked acknowledgment by a notary.

The circuit court also denied the portion of Williams's motion brought pursuant to CR 60.02 on the basis that it was not an appropriate motion to raise claims for ineffective assistance of counsel. To the extent Williams was claiming to be unfairly prosecuted, the circuit court determined that claim was without merit

because the citation in the case provided a valid basis for pursuing the charges against Williams: Williams acknowledged that after he learned about the victim's true age, their relationship continued and the information charged Williams with committing the offense between January 1, 2015 and July 31, 2015, which was after his daughter was born. The circuit court added that Williams could not have his plea vacated due to "buyer's remorse."

On appeal, Williams argues the circuit court erred in denying him relief under RCr 11.42 for not verifying his motion as verification does not require his signature to be notarized and, under CR 60.02, he was entitled to equitable relief because he believed he was entering into a sexual relationship with an adult based on the victim lying about her age.<sup>2</sup>

RCr 11.42(2) requires:

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

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<sup>2</sup> William continues to also argue the merits of his underlying claims for ineffective assistance of counsel. He expands on his arguments below by additionally arguing: (1) he was denied effective assistance of appellate counsel after the Department of Public Advocacy, despite being appointed to represent him, did nothing to represent him on appeal; (2) he was denied effective assistance of trial counsel because counsel erred by: (a) failing to investigate whether he could have a defense based upon the victim being expressly emancipated by her parents when they granted her permission to move in and live as a couple with Williams; and (b) allowing him to proceed against by information instead of indictment; and (3) KRS 510.060 is unconstitutional as not requiring a requisite mental state. Williams also argues that the circuit court misrepresented what he admitted to, which was only having sex with victim during the period of time in which she lied about her age and not after he learned her true age after the birth of their child.

comply with this section shall warrant a summary dismissal of the motion.

“The procedure for obtaining relief pursuant to the provisions of RCr 11.42 must be complied with.” *Cleaver v. Commonwealth*, 569 S.W.2d 166, 169 (Ky. 1978). This includes verification, which is a jurisdictional requirement. *Id.*

If an RCr 11.42 motion is not properly signed and verified it may be summarily dismissed. *Fraser v. Commonwealth*, 59 S.W.3d 448, 452 (Ky. 2001). Substantial compliance cannot save an RCr 11.42 motion from dismissal if it was not properly signed and verified. *Bowling v. Commonwealth*, 981 S.W.2d 545, 548 (Ky. 1998).

Verification is not made by simply signing or affirming. The process for verification is explained in *Taylor v. Kentucky Unemployment Ins. Comm'n*, 382 S.W.3d 826, 834 (Ky. 2012):

“Verification” is defined as “a formal declaration made in the presence of an authorized officer, such as a notary public, by which one swears to the truth of the statements in the document.” Black’s Law Dictionary, 1556 (7th ed.1999); *see also* 3 *Am.Jur.2d Affidavits* § 8 (A verified complaint must be sworn to under oath.). Thus the verification process is obviously distinguishable from a mere signature[.]

Verification . . . requires the statement of a third party (i.e., the notary or officer administering the oath) showing that the declarant has sworn an oath to the truthfulness of what is asserted in the document. *Id.*

For an RCr 11.42 motion to be properly verified, it must have a signature by the movant before the notary public swearing to good faith allegations with a minimum factual basis. *Stanford v. Commonwealth*, 854 S.W.2d 742, 748 (Ky. 1993).

Although the circuit court stated it was denying Williams's RCr 11.42 motion because of his failure to properly verify it, we interpret this as a dismissal because it was done on the basis of lack of jurisdiction rather than being a decision on the merits. Because the denial of Williams's RCr 11.42 motion was based on jurisdictional grounds, it could not serve as an adjudication on the merits.

Therefore, although the circuit court did not use those words, this portion of Williams's motion was dismissed for lack of jurisdiction without prejudice. CR 41.02(3). This means that should Williams file a subsequent RCr 11.42 motion, it would not be successive.<sup>3</sup> *Singleton v. Commonwealth*, 2003-CA-000204-MR, 2005 WL 1593773, 2 (Ky.App. 2005) (unpublished).<sup>4</sup>

Assuming Williams's CR 60.02 argument below could be construed as he argues it before us on appeal, that he is entitled to equitable relief because he

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<sup>3</sup> We express no opinion as to whether Williams's ineffective assistance of counsel claims have any merit or would be timely under RCr 11.42. We note that Williams received a very favorable plea agreement in that he was sentenced to one year of incarceration rather than a possible five years for this Class D felony. If he were permitted to withdraw from his plea agreement and allowed to proceed to trial, if convicted he could receive a lengthier sentence.

<sup>4</sup> We consider this unpublished opinion pursuant to Kentucky Rules of Civil Procedure 76.28(4)(c), because there are no published opinions adequately addressing this issue.

believed he was entering into a sexual relationship with an adult based on the victim lying about her age, this argument does not qualify for CR 60.02 relief. Williams admits that he learned of victim’s age upon the birth of their child. The charge against Williams was based on him continuing to have sex with victim after learning she was fifteen years old until the time of her sixteenth birthday. Williams was aware of all the facts surrounding this charge. By pleading guilty, Williams acknowledged that he voluntarily chose to continue to engage in sex with a fifteen-year-old after he learned her age. This is not a valid reason, let alone an “extraordinary” reason, which could justify granting Williams relief from his conviction and sentence.

Accordingly, we affirm the Daviess Circuit Court’s order denying Williams’s motion.

ALL CONCUR.

BRIEF FOR APPELLANT:

Bradley Williams, *pro se*  
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BRIEF FOR APPELLEE:

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