

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

NO. 2018-CA-000201-MR

MARCUS BRITT

APPELLANT

v. APPEAL FROM BARREN CIRCUIT COURT  
HONORABLE JOHN T. ALEXANDER, JUDGE  
ACTION NO. 08-CR-00209

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DIXON, GOODWINE, AND MAZE, JUDGES.

MAZE, JUDGE: Marcus Britt appeals the Barren Circuit Court's order denying his motion to vacate his conviction for first-degree burglary and first-degree robbery. After careful review, we affirm.

Britt was convicted by a Barren County jury and received a total sentence of thirty years' imprisonment. The Kentucky Supreme Court affirmed

Britt's conviction on direct appeal. *Britt v. Commonwealth*, 2009-SC-000451-MR, 2010 WL 3377750 (Ky. Aug. 26, 2010). Britt subsequently filed several motions seeking post-conviction relief. First, Britt filed a RCr<sup>1</sup> 11.42 motion alleging ineffective assistance by trial counsel. The trial court denied this motion and Britt failed to seek appellate review. Next, Britt filed a CR<sup>2</sup> 60.02 motion alleging his appellate counsel intentionally sabotaged his appeal. The trial court denied this motion and this Court affirmed. *Britt v. Commonwealth*, 2011-CA-001550-MR, 2013 WL 2257701 (Ky. App. May 24, 2013). Britt then filed another motion seeking relief under CR 60.02, alleging prosecutorial misconduct and fraud in his trial proceedings. The trial court denied this motion and this Court dismissed Britt's subsequent appeal for failing to timely file a brief.

In September 2017, Britt moved to vacate his conviction pursuant to RCr 10.02, RCr 10.06 and CR 60.02. The 2017 motion rehashed arguments already considered and rejected by the Kentucky Supreme Court in his direct appeal and once again alleged ineffective assistance by trial and appellate counsel. The trial court denied the motion as a successive attempt at post-conviction relief. We agree.

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<sup>1</sup> Kentucky Rules of Criminal Procedure.

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

“The structure provided in Kentucky for attacking the final judgment of a trial court in a criminal case is not haphazard and overlapping, but is organized and complete.” *Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983). The remedy for a defendant aggrieved by a judgment in a criminal case is to directly appeal that judgment, “stating every ground of error which it is reasonable to expect that he or his counsel is aware of when the appeal is taken.” *Id.* at 857. If the appeal is unsuccessful, the defendant is required to move under RCr 11.42 “to attack an erroneous judgment for reasons which are not accessible by direct appeal.” *Id.* at 856. Final disposition of the RCr 11.42 motion shall “conclude all issues that reasonably could have been presented in that proceeding.” *Id.* at 857. The defendant may then seek relief under CR 60.02. *Id.* However, CR 60.02 cannot be used as “another vehicle to revisit issues that should have been included or could have been included in prior requests for relief.” *Baze v. Commonwealth*, 276 S.W.3d 761, 766 (Ky. 2008).

All the arguments raised in Britt’s September 2017 motion either have been addressed previously or could have been raised in his prior RCr 11.42 or CR 60.02 motions. Accordingly, the trial court did not err by denying Britt’s latest attempt at post-conviction relief. Britt also contends the trial judge should have recused himself from ruling on his 2017 motion. This argument was not raised before the trial court. An appellate court lacks the authority to review issues not

raised in the trial court. *Norton Healthcare, Inc. v. Deng*, 487 S.W.3d 846, 852 (Ky. 2016). Regardless, the arguments in Britt’s motion were completely lacking in merit.

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

ALL CONCUR.

BRIEFS FOR APPELLANT:

Marcus Britt, *pro se*  
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BRIEF FOR APPELLEE:

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