

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-001402-MR

EDWIN JOHN RUSSELL, III
AKA JOHN EDWIN RUSSELL, III

APPELLANT

v. APPEAL FROM GRAVES CIRCUIT COURT
HONORABLE TIMOTHY C. STARK, JUDGE
ACTION NO. 12-CR-00081

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: GOODWINE, LAMBERT, AND K. THOMPSON, JUDGES.

LAMBERT, JUDGE: Edwin John Russell, III appeals from the Graves Circuit Court's denial of relief pursuant to RCr¹ 11.42. Because Russell's motion is successive and thus procedurally barred, we affirm the circuit court.

¹ Kentucky Rules of Criminal Procedure.

Full details of this case may be found in the Kentucky Supreme Court's unpublished opinion stemming from Russell's direct appeal. *Russell v. Commonwealth*, No. 2013-SC-000811-MR, 2016 WL 1127878 (Ky. Feb. 18, 2016). Briefly stated, Russell and two codefendants planned and executed a home invasion at the residence of Amanda Jett, Russell's former girlfriend, in Mayfield, Kentucky. In the course of the home invasion, Amanda's father was shot and killed. Following his jury trial in 2013, the circuit court convicted Russell on charges of complicity to murder, attempted murder, two counts of first-degree wanton endangerment, two counts of first-degree robbery, and two counts of first-degree burglary. The circuit court thereafter sentenced Russell to a concurrent term of twenty-five years' imprisonment. On direct appeal, our Supreme Court reversed one conviction for first-degree wanton endangerment, affirmed the remainder of the convictions, and left intact Russell's total twenty-five-year sentence.

On March 10, 2017, Russell filed his first motion to vacate his convictions pursuant to RCr 11.42, asserting ineffective assistance of counsel. Russell failed to verify his motion as required by RCr 11.42(2). The circuit court denied his motion without a hearing, and we affirmed the court's denial of relief. *Russell v. Commonwealth*, No. 2017-CA-000990-MR, 2019 WL 328674 (Ky. App. Jan. 25, 2019). On August 21, 2018, while his first RCr 11.42 motion was

pending, Russell filed a second RCr 11.42 motion, asserting ineffective assistance of counsel. On August 27, 2018, the circuit court denied this second motion without a hearing on grounds it was successive. This appeal followed.

The record indicates this is Russell's second designated RCr 11.42 motion. Successive motions under RCr 11.42 are not permitted.

An RCr 11.42 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). This provision has been held to bar successive RCr 11.42 motions. *See Fraser v. Commonwealth*, 59 S.W.3d 448, 454 (Ky. 2001) (citing *Butler v. Commonwealth*, 473 S.W.2d 108, 109 (Ky. 1971)).

Sanders v. Commonwealth, 339 S.W.3d 427, 438 (Ky. 2011). "In general, RCr 11.42 gives a person under sentence one, and only one, opportunity to 'state all grounds for holding the sentence invalid.'" *McDaniel v. Commonwealth*, 495 S.W.3d 115, 121 (Ky. 2016) (quoting RCr 11.42(3)). "Generally, a second such motion is not allowed." *Id.* (citing *Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983)).

Here, Russell attempts to argue grounds for invalidating his conviction which he could have brought in his previous RCr 11.42 motion. Russell's previous motion reached its final disposition in this court on January 25, 2019, which operates to conclude issues which could have been presented therein.

RCr 11.42(3). Based on the aforementioned principles, we agree with the circuit court in concluding Russell's second RCr 11.42 motion is procedurally barred.

For the foregoing reasons, we affirm the Graves Circuit Court's denial of relief under RCr 11.42.

ALL CONCUR.

BRIEF FOR APPELLANT:

Edwin John Russell, III, *pro se*
Fredonia, Kentucky

BRIEF FOR APPELLEE:

Andy Beshear
Attorney General of Kentucky

Jeffrey A. Cross
Assistant Attorney General
Frankfort, Kentucky