

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

NO. 2018-CA-001620-MR

NATASHA WOODARD

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT  
HONORABLE GREGORY M. BARLETT, JUDGE  
ACTION NO. 17-CR-00943

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: LAMBERT, MAZE, AND TAYLOR, JUDGES.

MAZE, JUDGE: Natasha Woodard appeals the order of the Kenton Circuit Court denying her motion to set aside her judgment of conviction and sentence. We affirm.

Woodard pleaded guilty to one count of first-degree criminal abuse, and the trial court entered a final judgment sentencing Woodard to seven years'

imprisonment. Woodard then retained a new attorney, who filed a motion stating, in its entirety, the following:

Comes now the Defendant, NATASHA WOODARD, by and through Counsel and respectfully request the Court to enter an Order to Set Aside the Judgment and Sentence entered August 9, 2018. An Affidavit is attached in support of this Motion.

In addition to failing to state grounds for the requested relief, the motion did not state which rule of criminal or civil procedure it was brought under. However, Woodard alleged in her affidavit that her original attorney misrepresented the sentence she would receive and never shared the Commonwealth's discovery with her. The trial court denied the motion for failing to set forth any legal grounds in support of setting aside its judgment and sentence. This appeal follows.

On appeal, Woodard argues her guilty plea was involuntary because her trial counsel provided ineffective assistance when advising her to plead guilty. In response, the Commonwealth contends we should treat Woodard's appeal as if she sought to vacate her conviction under RCr<sup>1</sup> 11.42. However, the Court of Appeals is not authorized to recharacterize an unlabeled motion to set aside as a RCr 11.42 motion. *McDaniel v. Commonwealth*, 495 S.W.3d 115, 124 (Ky. 2016). Only a trial court may recharacterize an unlabeled motion as a RCr 11.42 motion, and only after advising the litigant of its intent to do so, warning the litigant that

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

the characterization will make it more difficult to bring a subsequent motion under RCr 11.42, and allowing the litigation to withdraw or supplement the motion. *Id.* The trial court did not provide such an admonishment in this case. It simply denied the motion for failing to state any legal grounds for setting aside its judgment, which was within its discretion. *Id.* at 128. Thus, we will not review Woodard's appeal as a request to vacate her sentence under RCr 11.42.

Instead, our review of Woodard's appeal is much narrower. Any motion for a court order "shall state with particularity the grounds therefore and shall set forth the relief or order sought." RCr 8.14; CR<sup>2</sup> 7.02(1). Failure to state grounds for a motion constitutes waiver of the alleged error by the trial court. *Tennessee Products & Chemical Corp. v. Miller*, 282 S.W.2d 52, 53 (Ky. 1955). Because Woodard failed to provide any legal grounds in support of her motion to set aside her judgment and sentence, the trial court did not err by denying the motion.

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

ALL CONCUR.

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

BRIEF FOR APPELLANT:

Darrell A. Cox  
Covington, Kentucky

BRIEF FOR APPELLEE:

Andy Beshear  
Attorney General of Kentucky

Kristin L. Conder  
Assistant Attorney General  
Frankfort, Kentucky