

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2012-CA-001705-MR

TIMOTHY ROUSE, JR.

APPELLANT

v. APPEAL FROM FULTON CIRCUIT COURT  
HONORABLE BRIAN WIGGINS, JUDGE  
ACTION NO. 06-CR-00013

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE, CHIEF JUDGE; LAMBERT AND STUMBO, JUDGES.

STUMBO, JUDGE: Timothy Rouse, Jr. appeals from the denial of his RCr<sup>1</sup> 11.42 motion. We find no error and affirm.

Mr. Rouse pled guilty in the Fulton Circuit Court to complicity to robbery in the first degree, complicity to assault in the first degree, and complicity to burglary in the second degree. The trial court accepted the guilty plea and

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

sentenced Mr. Rouse to 10 years for complicity to robbery, 10 years for complicity to assault, and 7 and one-half years for complicity to burglary, all to run consecutively.

Mr. Rouse filed an RCr 11.42 motion on February 7, 2008. That motion was denied on February 20, 2008. A prior panel of this Court declined to hear a belated appeal from that order. Since the disposition of that first RCr 11.42 motion, Mr. Rouse has filed at least two other RCr 11.42 motions, three CR<sup>2</sup> 60.02 motions, and numerous amendments and related motions. On January 19, 2010, the circuit court entered an order denying relief pursuant to RCr 11.42 and CR 60.02. On August 27, 2010, a prior panel of this Court affirmed the denial of the RCr 11.42 and CR 60.02 motions.

On July 11, 2012, Mr. Rouse filed another RCr 11.42 motion. That motion argued that the trial court failed to properly consider granting Mr. Rouse probation or taking into consideration the presentence investigation report. He claimed the trial court had already decided what sentence to impose before the sentencing hearing. This would violate KRS<sup>3</sup> 532.050(1), KRS 533.010(1), RCr 11.02, *McClanahan v. Commonwealth*, 308 S.W.3d 694 (Ky. 2010), and *Edmonson v. Commonwealth*, 725 S.W.2d 595 (Ky. 1987).

On August 10, 2012, the circuit court denied the RCr 11.42 motion because it was not properly verified by being signed in front of a notary public.

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

<sup>3</sup> Kentucky Revised Statutes.

The order also noted that the argument was substantively without merit. On August 21, 2012, Mr. Rouse filed another RCr 11.42 motion raising the same arguments. This motion was properly verified. The trial court entered an order denying the motion on September 17, 2012. This appeal followed.

We find that the trial court properly denied Mr. Rouse's current RCr 11.42 motion. RCr 11.42(3) provides that "[t]he 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." In other words, RCr 11.42(3) requires that a defendant present all grounds for relief that were known to him or could have been presented in his first RCr 11.42 motion. *Case v. Commonwealth*, 467 S.W.2d 367, 368-369 (Ky. 1971).

In the case at hand, the requirement that a trial court consider the pretrial investigative report, consider whether to impose probation, and to not decide a defendant's sentence prior to the sentencing hearing has been the law in Kentucky since at least 1987, as can be seen by the *Edmonson* case cited *supra*. This argument could have been raised in Mr. Rouse's first RCr 11.42 motion in 2008.

For the foregoing reasons, we affirm the judgment of the Fulton Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Timothy Rouse, Jr., *pro se*  
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BRIEF FOR APPELLEE:

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