

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2004-CA-001857-MR

WILLIAM TODD BURNS

APPELLANT

v. APPEAL FROM MUHLENBERG CIRCUIT COURT  
HONORABLE BILL CUNNINGHAM, SPECIAL JUDGE  
ACTION NO. 90-CR-00001

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: BARBER, BUCKINGHAM, AND JOHNSON, JUDGES.

BUCKINGHAM, JUDGE: William Todd Burns appeals from orders of the Muhlenberg Circuit Court denying his motions pursuant to CR<sup>1</sup> 60.02, CR 59.05, and CR 52.02. Burns is a prison inmate, and he is seeking relief from criminal convictions and a life sentence. We conclude that the circuit court properly denied Burns's motions, and we thus affirm.

On November 27, 1989, Jack Nelson was stabbed to death. Burns was charged in a grand jury indictment with

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

capital murder and first-degree robbery in connection with the incident. Following the indictment, the circuit court ordered that Burns be evaluated and treated by the Kentucky Correctional Psychiatric Center (KCPC) "as to any mental disease or defect that may relate to his competency and criminal responsibility." A psychological evaluation report in the court record concludes that Burns was both competent to stand trial and responsible for his behavior at the time the allegations took place.

On October 3, 1990, Burns, who was represented by counsel, signed a plea agreement with the Commonwealth. On the same day, Burns entered an Alford plea of guilty to murder and first-degree robbery. Pursuant to the agreement, the court sentenced Burns to life in prison for murder and 20 years in prison for first-degree robbery. Also in accordance with the agreement, the court ordered the sentences to be served consecutively. The final judgment was entered on November 9, 1990.<sup>2</sup>

On July 22, 1994, Burns filed a motion to correct and/or amend his sentence. Therein, he moved the court to order that his sentences run concurrently with each other rather than

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<sup>2</sup> Judge Dan Cornette was the circuit judge who sentenced Burns and signed the final judgment. Judge Cornette was also the judge who signed other postjudgment orders referred to in this opinion. Special Judge Cunningham signed the order that is subject to this appeal.

consecutively. The motion was granted, and the court ordered Burns's sentences to run concurrently.

On October 31, 1994, Burns filed a motion to vacate or set aside the judgment pursuant to RCr<sup>3</sup> 11.42. The grounds alleged in support of the motion included that his guilty plea was not knowingly and intelligently entered and that the court had failed to order a competency hearing despite ordering that he be evaluated at KCPC. In an order entered on December 8, 1994, the court denied Burns's motion. Burns appealed to this court, but we later dismissed his appeal pursuant to his motion.

On June 29, 1998, Burns moved the court to vacate the judgment pursuant to CR 60.02. Therein, he alleged that the court had erroneously failed to hold a competency hearing prior to accepting his guilty plea. That motion was denied by the court in an order entered on July 29, 1998. On appeal, this court affirmed the denial.

On April 24, 2000, Burns filed another CR 60.02 motion. The circuit court denied the motion in an order entered on May 2, 2000. Burns again appealed, and this court affirmed the circuit court's denial of the motion.

On January 11, 2001, Burns filed another motion to vacate the judgment pursuant to CR 60.02. The court denied the motion in an order entered on January 26, 2001. Burns appealed,

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<sup>3</sup> Kentucky Rules of Criminal Procedure.

and this court dismissed the appeal pursuant to a joint motion to dismiss.

On January 26, 2004, Burns filed yet another CR 60.02 motion. Therein, he alleges that his conviction and sentence "violates due process of law since reasonable grounds existed for the trial judge to belief [sic] that the defendant may not have been competent at the time the court accepted the defendant's Alford plea." The circuit court denied Burns's motion in an order dated May 24, 2004.

On June 8, 2004, Burns filed a motion to alter, amend, or vacate pursuant to CR 59.05 and a motion for additional findings pursuant to CR 52.02. The court denied those motions in an order entered on July 1, 2004. Burns apparently did not receive a copy of the order since he thereafter filed a motion for the court to rule on his earlier motions. In an order entered on August 30, 2004, the court again denied the motions. This appeal by Burns followed.

KRS 504.100(3) states that "[a]fter the filing of a report (or reports), the court shall hold a hearing to determine whether or not the defendant is competent to stand trial." Although the psychological evaluation report was filed in this case, the court did not hold such a hearing. The requirements of KRS 504.100(3) are mandatory, and the defendant cannot waive them. See Mills v. Commonwealth, 996 S.W.2d 473, 486 (Ky.

1999). Burns argues that his conviction should be vacated and that his case should be remanded to the circuit court for a retrospective competency hearing. See Thompson v. Commonwealth, 56 S.W.3d 406 (Ky. 2001).

The circuit court denied Burns's motion on the grounds that the issue raised was one that Burns could or should have raised in his RCr 11.42 motion in 1994. The court cited McQueen v. Commonwealth, 948 S.W.2d 415 (Ky. 1997), wherein the Kentucky Supreme Court held that "Civil Rule 60.02 is not intended merely as an additional opportunity to relitigate the same issues which could 'reasonably have been presented' by direct appeal or RCr 11.42 proceedings." Id. at 416. See also Gross v. Commonwealth, 648 S.W.2d 853 (Ky. 1983).

Having examined the record, we agree with the circuit court's denial of Burns's motion. In Burns's RCr 11.42 motion in 1994, he raised the issue of the court's failure to hold a competency hearing prior to accepting his guilty plea. As we have noted, the court denied his motion and Burns dropped his appeal. Under these circumstances, he may not now raise the issue again.

Burns also argues that the court abused its discretion by failing to comply with CR 59.05 and CR 52.02. We find no error in this regard.

The orders of the Muhlenberg Circuit Court are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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