RENDERED: OCTOBER 12, 2007; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2006-CA-001828-MR

LEIF ERIC HELLSTROM APPELLANT

v.

APPEAL FROM JESSAMINE CIRCUIT COURT
HONORABLE C. HUNTER DAUGHERTY, JUDGE
INDICTMENT NOS. 89-CR-00071 & 93-CR-00123
INFORMATION NO. 94-CR-00074

COMMONWEALTH OF KENTUCKY APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: DIXON AND KELLER, JUDGES; GRAVES,[1] SENIOR JUDGE.

DIXON, JUDGE: Appellant, Leif Eric Hellstrom, appeals *pro se* from an order of the Jessamine Circuit Court denying his motion for relief pursuant to CR 60.02. Finding no error, we affirm.

In June 1994, Appellant pled guilty to two counts of first-degree sexual abuse. Pursuant to the Commonwealth's recommendation, the trial court sentenced

[1] Senior Judge J. William Graves sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

Appellant to two five-year consecutive sentences, which were ordered to run consecutive to two other sentences for sex crimes, for a total of twenty years' imprisonment. However, the trial court probated Appellant for a period of five years on the condition that he complete a sex offender treatment program. In November 1996, the trial court entered an order revoking Appellant's probation on the grounds that he failed to complete the treatment program and remained a risk to children.[2] Appellant was remanded to the Kentucky Department of Corrections to serve the remainder of his term. It appears that he has now served out his sentence relating to those charges.

On August 7, 2006, Appellant filed a CR 60.02 motion in the trial court seeking an order relieving him of the duty to register as a sex offender and directing that he not be deemed a violent offender. Specifically, Appellant claimed that his attorney was ineffective when she misrepresented to him that his plea agreement would not be affected by the enactment of the registration laws contained in KRS 17.520.[3] As such, Appellant claimed that he should either be exempt from such laws or should be entitled to withdraw his guilty plea and go to trial on the charges. On August 22, 2006, the trial court denied Appellant's motion, as well as his requests for an evidentiary hearing and the appointment of counsel. This appeal ensued.

In this Court, Appellant again argues that his attorney provided ineffective assistance of counsel when she failed to advise him that he would be required to comply

---

[2] This Court affirmed the trial court in an unpublished opinion rendered June 19, 1998.

[3] The original version of KRS 17.500 et seq., Kentucky's version of Megan's Law, was enacted on July 15, 1994.

with any and all sex offender registration requirements. Appellant contends that had he been aware of such, he would not have pled guilty and instead would have gone to trial on the charges. We conclude that Appellant's motion was not only unpersuasive, but also untimely.

In *Gross v. Commonwealth,* 648 S.W.2d 853 (Ky. 1983), our Supreme Court held that the RCr 11.42 forecloses a defendant from raising any questions under CR 60.02 which could have reasonably been brought by RCr 11.42 proceedings. "CR 60.02 is for relief that is not available by direct appeal and not available under RCr 11.42. The movant must demonstrate why he is entitled to this special, extraordinary relief." As Appellant failed to raise his ineffective assistance of counsel claim in an RCr 11.42 motion, he is procedurally precluded from seeking relief via CR 60.02. Furthermore, we would note that a motion made pursuant to CR 60.02 "shall be made within a reasonable time." Appellant entered his guilty plea in 1994, just weeks before the sex offender registration requirements came into law. Yet, he did not file the instant motion until 2006.

Notwithstanding the procedural deficiencies, we are of the opinion that Appellant's claims are wholly without merit. Appellant has failed to demonstrate that counsel was ineffective even if she did, in fact, fail to advise him of the implications of the registration laws. *See Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674. Nor do we find any grounds for excusing Appellant from the requirements of KRS 17.520(2). As the trial court noted, our Supreme Court in *Hyatt v.*

Commonwealth, 72 S.W.3d 566 (Ky. 2002), *cert. denied,* 538 U.S. 909 (2003), held that sexual offender registration is not an improper ex post facto application of law and does not violate any constitutional right to privacy.

> Sex Offender Registration Statutes are directly related to the nonpunitive goals of protecting the safety of the public. The statutes in question do not amount to a separate punishment based on past crimes.
>
> The Registration and Notification Statutes are reasonably related to the nonpunitive goals of protecting the public and facilitating law enforcement. *Doe v. Pataki*, 120 F.3d 1263 (2nd Cir.1997). Registration is a reasonable and proper means for achieving its purpose and completely consistent with the exercise of the police power of the Commonwealth to protect the safety and general welfare of the public. *Snyder v. State,* 912 P.2d 1127 (Wyo.1996). Any potential punishment arising from the violation of the Sex Offender's Registration Act is totally prospective and is not punishment for past criminal behavior. *See Kitze v. Commonwealth*, 475 S.E.2d 830 (Va. App. 1996). Although registration might impose a burden on a convicted sex offender, registration is merely a remedial aspect of the sentence. *See Kitze, supra*. The registration and notification required by the statutes are nonpunitive and provide only the slightest inconvenience to the defendant, although they provide the overwhelming public policy objective of protecting the public.

Hyatt, supra, at 572-73.

Accordingly, we conclude that Appellant's claims are both procedurally barred and substantively insufficient. As such, the Jessamine Circuit Court properly denied his CR 60.02 motion.

ALL CONCUR.

BRIEF FOR APPELLANT:
Leif Eric Hellstrom, Pro Se
Lexington, Kentucky

BRIEF FOR APPELLEE:
Gregory D. Stumbo
Attorney General of Kentucky

Clint E. Watson
Assistant Attorney General
Frankfort, Kentucky