

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

NO. 2009-CA-000128-MR

LASHANE MORRIS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE MARY M. SHAW, JUDGE  
ACTION NO. 00-CR-002144

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: MOORE, NICKELL, AND WINE, JUDGES.

WINE, JUDGE: Lashane Morris, *pro se*, appeals from the denial of his Kentucky Rule of Civil Procedure (“CR”) 60.02 motion for post-conviction relief. He seeks relief from judgment on the ground that the jury process in Jefferson County is irregular, in that it systematically excludes African-Americans from jury panels. Upon review, we affirm.

On October 4, 2000, Morris was indicted by a Jefferson County grand jury for first-degree robbery and being a first-degree persistent felony offender.<sup>1</sup> At the conclusion of the jury trial, Morris was acquitted of the robbery charge but was convicted of the lesser-included offense of theft by unlawful taking over three hundred dollars. He was also found to be a first-degree persistent felony offender. Morris was sentenced to five years' imprisonment which was enhanced to fifteen years.

Thereafter, Morris filed his direct appeal, wherein this Court affirmed the conviction. Morris petitioned for discretionary review by the Supreme Court, which was denied. Morris then filed a Kentucky Rules of Criminal Procedure ("RCr") 11.42 motion in the Jefferson Circuit Court claiming ineffective assistance of counsel and venire irregularities. The motion was denied; said denial being later affirmed by this Court. Morris then filed a CR 60.02 motion in the Jefferson Circuit Court alleging that jury selection was irregular due to the systematic exclusion of African-Americans from the panel. The Jefferson Circuit Court denied the motion. Morris now appeals.

Upon review of a denied CR 60.02 motion, we apply an abuse of discretion standard. *Brown v. Commonwealth*, 932 S.W.2d 359, 361 (Ky. 1996). The test for abuse of discretion is "whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999). However, CR 60.02 is limited to

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<sup>1</sup> The underlying facts were that Morris stole envelopes full of cash from a woman distributing payroll to her employees in a McDonald's parking lot.

afford extraordinary relief to defendants which is not available in other proceedings. *Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983). The rule is not intended as a vehicle for defendants to relitigate previously determined issues or to raise issues which could have been addressed in a direct appeal or by RCr 11.42 motion. *Id.* See also, *McQueen v. Commonwealth*, 948 S.W.2d 415, 416 (Ky. 1997).

Morris contends on appeal that his CR 60.02 motion was improperly denied because the venire from which the jury was taken did not fairly represent a cross-section of the community and thus violated his rights under the United States and Kentucky constitutions. However, Morris already raised this issue in his direct appeal, which this Court rejected. *Morris v. Commonwealth*, 2004 WL 259276 (Ky. App. 2004) (2002-CA-002517-MR). Morris also raised this issue in an RCr 11.42 motion, which this Court again rejected. *Morris v. Commonwealth*, 2007 WL 1207128 (Ky. App. 2007) (No. 2005-CA-000840-MR). As previously stated, CR 60.02 is not an avenue for defendants to relitigate issues which *could have been* or *already were* finally decided. *Gross, supra.* See also, *McQueen, supra.* Thus, it was proper for the trial court to deny the motion.

Hence, we affirm the Jefferson Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Lashane Morris, *pro se*  
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Jack Conway  
Attorney General of Kentucky

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