

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-000635-MR

TERRY DEAN HAYNES

APPELLANT

v. APPEAL FROM PIKE CIRCUIT COURT
HONORABLE STEVEN D. COMBS, JUDGE
ACTION NO. 80-CR-0038 & 80-CR-0039 & 80-CR-0041 &
80-CR-0042 & 80-CR-0043 & 80-CR-0044

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CAPERTON AND CLAYTON, JUDGES; BUCKINGHAM, SENIOR JUDGE.

CLAYTON, JUDGE: This is an appeal from the Pike Circuit Courts denial of the appellant's motion to vacate sentence pursuant to Kentucky Rule of Civil Procedure ("CR") 60.02 without holding an evidentiary hearing. Based upon the following, we affirm the decision of the trial court.

BACKGROUND INFORMATION

On March 20, 1980, the appellant, Terry Dean Haynes, was indicted in Pike County, Kentucky, for the offenses of Burglary I; two counts of Burglary III; and three counts of Arson II. In June of 1982, Haynes was convicted by a jury of all counts except one count of Burglary III, and thereafter was sentenced to thirty years' imprisonment for the crimes. After his conviction, Haynes filed an appeal. The Kentucky Supreme Court affirmed his convictions in October of 1983 on all charges.

Haynes had also been tried and convicted for several crimes in West Virginia. As a result, he was transferred to West Virginia to begin serving his time. On February 26, 2009, Haynes filed a CR 60.02 motion with the Pike Circuit Court. The trial court summarily denied this motion on March 6, 2009, finding that the motion was filed "well outside the time limit for RCr 11.42 and CR 60.02(a),(b), and (c) relief." Haynes now appeals the trial court's decision arguing that the court abused its discretion in failing to grant an evidentiary hearing upon his motion.

STANDARD OF REVIEW

The standard of review of an appeal involving a CR 60.02 motion is whether the trial court abused its discretion. A movant is not entitled to a hearing on a CR 60.02 motion unless he "affirmatively alleges facts which, if true, justify vacating the judgment and further allege[s] special circumstances that justify CR 60.02 relief."

White v. Commonwealth, 32 S.W.3d 83, 86 (Ky. App. 2000). With this standard in mind, we will examine Haynes's arguments.

DISCUSSION

In *McQueen v. Commonwealth*, 948 S.W.2d 415, 416 (Ky. 1997), the Kentucky Supreme Court held that CR 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." In his motion before the trial court, Haynes contended that his Kentucky sentence should run concurrently with his West Virginia sentence rather than consecutively. He further alleged that the Commonwealth's Attorney who prosecuted his case made prejudicial comments during closing arguments.

The trial court held:

This Motion was filed over 25 years after [Haynes's] convictions were affirmed, well outside the time limit for RCr 11.42 and CR 60.02(a), (b), and (c) relief. CR 60.02(d) and (e) do not apply, and the Defendant has not demonstrated any other reason of an extraordinary nature to justify relief under CR 60.02(f). The Court will also note that the Defendant's allegations of prejudicial

remarks were addressed and rejected by the Kentucky Supreme Court.

Circuit Court Opinion at p. 1.

We agree with the trial court. As referred to above, when an appellant's allegations are refuted by the record, an evidentiary hearing is not required. *Commonwealth v. Stamps*, 672 S.W.2d 336 (Ky. 1984). Clearly, Haynes

brought this motion 25 years after his conviction. He has set forth nothing in his motion that would indicate such a chasm of time was justified. Thus, we find the trial court did not abuse its discretion in denying the motion and in denying Haynes's request for an evidentiary hearing.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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