

RENDERED: AUGUST 20, 2010; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2009-CA-001800-MR

TERRELL LITTLE

APPELLANT

v. APPEAL FROM PIKE CIRCUIT COURT  
HONORABLE EDDY COLEMAN, JUDGE  
ACTION NO. 02-CR-00043

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS AND DIXON, JUDGES; BUCKINGHAM,<sup>1</sup> SENIOR  
JUDGE.

BUCKINGHAM, SENIOR JUDGE: Terrell Little appeals from an order of the  
Pike Circuit Court denying his motion pursuant to Kentucky Rules of Civil  
Procedure (CR) 60.02 for relief from a 20-year prison sentence. We affirm.

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<sup>1</sup> Senior Judge David C. Buckingham 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.

Shortly after noon on March 3, 2002, Brian and Clara Meade drove in Brian's Ford F-150 pickup truck toward Huntington, West Virginia. While rounding a dangerous curve, Little drove his Ford Ranger across the center line of the road and collided head-on with the Meades's truck. The collision caused the Meades's truck to spin counter-clockwise and to slide off the roadway into a bottom.

Brian Meade died of internal bleeding as a result of the injuries he suffered in the accident. The collision broke several bones in Clara Meade's body, and she will face a long recovery, including multiple surgeries and physical therapy.

Rescue personnel cut Little out of his vehicle. The impact had pinned Little's foot under the brake pedal, although he did not complain about pain when rescue personnel twisted his foot to remove him from the truck. When rescue personnel asked Little questions while he sat in the driver's seat of his truck, he stared straight ahead and was unresponsive.

Little provided blood and urine samples as requested by police. The tests revealed valium and cocaine in Little's blood and urine, and he admitted to police that he did not have a prescription for the valium. Dr. Christiana Rolf, a Kentucky State Medical Examiner, testified at trial that the levels of cocaine and

valium present in Little's blood were at sufficient levels to impair his ability to operate a motor vehicle.

A Pike County grand jury indicted Little for the murder of Brian Meade and for the first-degree assault of Clara Meade. A jury convicted Little of both charges and recommended a 20-year sentence of imprisonment for the murder conviction and a 10-year sentence for the assault conviction, with the sentences to run concurrently. Final judgment was entered on April 1, 2003.

Little appealed his convictions to the Kentucky Supreme Court. On appeal, he attacked the qualifications and sufficiency of facts underlying the testimony of the Commonwealth's expert, Dr. Rolf, and he also argued that KRS 507.020(1)(b) was void for vagueness because the phrase "extreme indifference to human life" is a "nebulous concept" incapable of certain grasp by the average person. The Kentucky Supreme Court rejected Little's arguments and affirmed his convictions in a unanimous unpublished opinion rendered on March 18, 2004. *See Little v. Commonwealth*, 2004 WL 537786 (Ky. 2004)(2003-SC-0276-MR).

On February 28, 2007, Little filed a motion in the circuit court to vacate his convictions pursuant to Kentucky Rules of Criminal Procedure (RCr) 11.42. He claimed that he received ineffective assistance of trial counsel and that insufficient evidence existed to convict him of wanton murder. The circuit court denied the motion, and a panel of this court affirmed the circuit court's decision. *See Little v. Commonwealth*, 2008 WL 2065794 (Ky. App. 2008)(2007-CA-000767-MR).

On August 7, 2009, Little filed a motion in the circuit court to vacate, set aside, or correct the judgment of conviction and sentence pursuant to CR 60.02(f). He contended that he was denied a fair trial as a result of the cumulative effect of errors in his case and also that he was actually innocent. The circuit court denied Little's motion without conducting an evidentiary hearing. This appeal followed.

The standard of review when a trial court declines to conduct an evidentiary hearing on a CR 60.02 motion is whether the court abused its discretion. "The decision to hold an evidentiary hearing is within the trial court's discretion and we will not disturb such absent any abuse of that discretion." *Land v. Commonwealth*, 986 S.W.2d 440, 442 (Ky. 1999).

An evidentiary hearing is not necessary to consider issues already refuted by the trial court record. *Haight v. Commonwealth*, 41 S.W.3d 436, 442 (Ky. 2001), *overruled on other grounds by Leonard v. Commonwealth*, 279 S.W.3d 151, 157 (Ky. 2009); *Fraser v. Commonwealth*, 59 S.W.3d 448 (Ky. 2001). We conclude that the trial court did not abuse its discretion by declining to conduct an evidentiary hearing because the record sufficiently addressed the issues raised by Little.

The record refutes Little's claim of cumulative error because the courts have already considered all of the errors raised by him in his direct appeal and in the RCr 11.42 proceeding and found they lacked merit. Since each

individual allegation of error was meritless, they can have no cumulative effect.

*Epperson v. Commonwealth*, 197 S.W.3d 46, 65-66 (Ky. 2006).

The record also refutes Little's claim of actual innocence. In his brief, Little focuses on an argument that he is entitled to an evidentiary hearing on his motion because he is attacking the credibility of the Commonwealth's expert witness, Dr. Rolf. Little asserts that Dr. Rolf's testimony was "incorrect and prejudicially misleading to the jury."

"[T]he credibility of witnesses are functions peculiarly within the province of the jury, and the jury's determination will not be disturbed." *Jones v. Commonwealth*, 281 S.W.2d 920, 922 (Ky. 1955). Here, the jury heard testimony from expert witnesses of both the Commonwealth and Little. As in the *Jones* case, "the jury believed the witnesses for the prosecution rather than the defendant and his witnesses." *Id.* Furthermore, the Kentucky Supreme Court discussed at length and upheld the admissibility of Dr. Rolf's testimony in its opinion affirming Little's conviction and sentence on direct appeal.

CR 60.02 is not intended merely as an additional opportunity to relitigate the same issues which could have reasonably been presented on direct appeal or in RCr 11.42 proceedings. *Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983). "It is for relief that is not available by direct appeal and not available under RCr 11.42." *Id.* Further, "[b]efore the movant is entitled to an evidentiary hearing, he must affirmatively allege facts which, if true, justify

vacating the judgment and further allege special circumstances that justify CR 60.02 relief.” *Id.*

Little had the opportunity to attack the credibility of Dr. Rolf and the admissibility of her testimony both at the trial court level and on direct appeal to the Kentucky Supreme Court. In fact, he did so. Nevertheless, the jury considered Dr. Rolf’s testimony along with the other evidence and found Little guilty, and the Supreme Court upheld the admissibility of the testimony. In addition, the Supreme Court examined the sufficiency of the evidence in its opinion affirming the judgment.

We conclude that Little’s CR 60.02 motion failed to raise a new argument that fits within the scope of CR 60.02. Accordingly, we affirm the order of the Pike Circuit Court denying the motion.

ALL CONCUR.

BRIEF FOR APPELLANT:

Terrell Little, *pro se*  
Sandy Hook, Kentucky

BRIEF FOR APPELLEE:

Jack Conway  
Attorney General of Kentucky

Michael L. Harned  
Assistant Attorney General  
Frankfort, Kentucky