

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-001227-MR

JACK HAYS

APPELLANT

v. APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE KAREN CONRAD, JUDGE
ACTION NO. 81-CR-00031

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: COMBS AND LAMBERT, JUDGES. SHAKE,¹ SENIOR JUDGE.

SHAKE, SENIOR JUDGE: Jack Hays appeals, *pro se*, from an Oldham Circuit Court order, entered May 13, 2010, denying his Kentucky Rules of Civil Procedure (CR) 60.02 motion for post-conviction relief. Hays claims that KRS 532.110 (1) prohibits his 1983 sentence of five-years' imprisonment from running

¹ Senior Judge Ann O'Malley Shake 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.

consecutively to his previous² sentence of life imprisonment. Following a review of KRS 532.110, applicable case law, and the facts of this case, we affirm the Oldham Circuit Court.

In February 1981, Hays escaped from the Kentucky State Reformatory, where he was serving a life sentence. In March, 1981, the Oldham County Grand Jury indicted Hays on one-count of second-degree escape. On February 14, 1983, Hays pled guilty to the escape charge. In exchange for his plea, the Commonwealth recommended five-years' imprisonment to run consecutively to the sentence Hayes was serving. The Oldham Circuit Court sentenced Hayes in conformance with the plea agreement.

In 1999, Hayes, *pro se*, moved the Oldham Circuit Court to dismiss the second-degree escape indictment based upon the Commonwealth's failure to provide him with a copy of the grand jury proceedings. After his motion was denied, Hayes, *pro se*, filed a petition for writ of prohibition claiming that a copy of the grand jury proceedings should have been filed. The trial court denied his request.

On January 11, 2010, Hayes, *pro se*, moved the Oldham Circuit Court for post-conviction relief, pursuant to CR 60.02, claiming that KRS 532.110 prohibited his sentences from running consecutively. On May 13, 2010, the Oldham Circuit Court denied Hays' motion. This appeal follows.

² The record in this case provides conflicting information concerning the date of Hays' prior conviction for which he was sentenced to life imprisonment.

Plea agreements are “constitutional contracts” that are binding upon criminal defendants upon his/her acceptance of the agreement or his/her detrimental reliance upon the offer. *Commonwealth v. Reyes*, 764 S.W. 2d 62, 64 (Ky. 1989). They are interpreted according to principles of contract law. *Elmore v. Commonwealth*, 236 S.W. 3d 623, 626 (Ky. App. 2007). Therefore, it follows that both criminal defendants and the Commonwealth are entitled to the benefit of the bargain under the agreement. In the plea agreement, Hays expressly agreed to serve five-years’ imprisonment consecutive to his current life sentence.

Further, CR 60.02 is not the proper avenue for relief. CR 60.02 provides relief where extraordinary and compelling equities exist. *Bishir v. Bishir*, 698 S.W.2d 823, 826 (Ky.1985). The movant must “demonstrate why he is entitled to this special, extraordinary relief.” *McQueen v. Commonwealth*, 948 S.W.2d 415, 416 (Ky. 1997). CR 60.02 is not intended to afford individuals an additional opportunity to re-litigate issues that have already been presented in an earlier direct appeal or collateral attack or present new issues that could have been raised in those proceedings. *Id.* Instead, CR 60.02 “is available only to raise issues which cannot be raised in other proceedings.” This issue should have been addressed in his direct appeal or his previous requests for post conviction relief.

ALL CONCUR.

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