

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-000954-MR

JOHN FRANCIS THOMPSON

APPELLANT

v. APPEAL FROM GRAVES CIRCUIT COURT
HONORABLE TIMOTHY C. STARK, JUDGE
ACTION NO. 02-CR-00043

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: COMBS, THOMPSON, AND VANMETER, JUDGES.

VANMETER, JUDGE: John Francis Thompson appeals *pro se* from an order of the Graves Circuit Court denying his motion to release his mental health records.

For the following reasons, we affirm.

On May 14, 2003, Thompson appeared in open court with his attorney and changed his plea of not guilty to a plea of guilty, but mentally ill, to murder and

first-degree burglary. The trial court entered findings and an order ruling on Thompson's motion to enter a plea of guilty, but mentally ill, specifically addressing Thompson's mental condition and evaluation history with Kentucky Correctional Psychiatric Center ("KCPC"). The court concluded that the record supported Thompson's plea of guilty, but mentally ill, in accordance with the provisions of KRS¹ 504.130(1)-(2). Thereafter, the trial court entered judgment on Thompson's plea of guilty and sentenced him to life in prison without the possibility of probation or parole for twenty-five years on the count of murder and twenty years' imprisonment on the count of first-degree burglary, to run concurrently.

Thompson then moved to amend the judgment and sentence pursuant to CR² 60.02 and CR 60.03, which the trial court denied. Thompson also moved to vacate the sentence pursuant to RCr³ 11.42, which was denied. Subsequently, Thompson filed a motion to release his mental health records for the purpose of further pursuing post-conviction relief, which the trial court denied. This appeal followed.

On appeal, Thompson argues he is entitled to release of his mental health records to perfect a post-conviction motion. He maintains that his guilty plea was involuntary because he was under the influence of mind-altering medication and

¹ Kentucky Revised Statutes.

² Kentucky Rules of Civil Procedure.

³ Kentucky Rules of Criminal Procedure.

suffered from mental instability during the plea negotiations and plea colloquy.

We disagree.

In Kentucky, the structure for challenging the final judgment of a trial court in a criminal matter

is not haphazard and overlapping, but is organized and complete. That structure is set out in the rules related to direct appeals, in RCr 11.42, and *thereafter* in CR 60.02. CR 60.02 is not intended merely as an additional opportunity to raise *Boykin* defenses. It 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. Before 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.

Gross v. Commonwealth, 648 S.W.2d 853, 856 (Ky. 1983).

Further, “courts have much more to do than occupy themselves with successive ‘reruns’ of RCr 11.42 motions stating grounds that have or should have been presented earlier.” *Hampton v. Commonwealth*, 454 S.W.2d 672, 673 (Ky. 1970) (citation omitted). Here, the record reflects that Thompson already filed two motions for post-conviction relief, pursuant to CR 60.02 and RCr 11.42, both of which were denied. The final disposition of his RCr 11.42 motion concluded “all issues that could reasonably have been presented in the same proceeding.” RCr 11.42(3). Accordingly, we decline to review the trial court’s denial of Thompson’s motion for release of his mental health records to perfect another post-conviction motion.

The order of the Graves Circuit Court is affirmed.

COMBS, JUDGE, CONCURS.

THOMPSON, JUDGE, DISSENTS WITHOUT SEPARATE
OPINION.

BRIEF FOR APPELLANT:

John Francis Thompson, *Pro se*
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

Courtney J. Hightower
Assistant Attorney General
Frankfort, Kentucky