

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

NO. 2010-CA-000909-MR

WILLIAM B. WALKER

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT  
v. HONORABLE JUDITH E. MCDONALD-BURKMAN, JUDGE  
ACTION NO. 153238

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: TAYLOR, CHIEF JUDGE; MOORE AND WINE, JUDGES.

MOORE, JUDGE: William B. Walker appeals the Jefferson Circuit Court's order denying his CR<sup>1</sup> 60.02 motion to vacate his judgment of conviction. After a careful review of the record, we affirm.

The record reveals that in 1975, Walker was convicted of first-degree involuntary manslaughter and sentenced to ten years of imprisonment. He appealed, and the Kentucky Supreme Court affirmed the circuit court's judgment.

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<sup>1</sup> Kentucky Rule(s) of Civil Procedure.

Walker was released on parole in 1977, and in 1984, his civil rights were restored by Governor Martha Layne Collins.

Thereafter, Walker filed a CR 60.02 motion to vacate the judgment against him. In 1986, the circuit court denied that motion, reasoning that Walker had filed his motion eleven and a half years after his conviction, which was a delay the circuit court found “inexcusable.”

Walker filed a successive CR 60.02 motion in 2010 that raised eight claims. The circuit court denied that motion, reasoning that Walker’s successive CR 60.02 motion was not brought within a reasonable time, as required to receive CR 60.02 relief.

Walker now appeals, contending that: (a) his judgment of conviction is void under CR 60.02(e) because it was never officially signed by the trial court; (b) the circuit court erred in applying a time limitation to bar his request for CR 60.02(e) relief; (c) the law of the case rule does not apply in this case; (d) the circuit court abused its discretion when it applied the “reasonable time” limitation because Walker’s claim of a flagrant miscarriage of justice precluded its application; and (e) the 1975 judgment of conviction and sentence is an absolute and clearly arbitrary exercise of power over Walker, which violates Section 2 of the Kentucky Constitution.

On appeal, we review the denial of a CR 60.02 motion for an abuse of 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) (internal quotation marks and citation omitted).

The merits-based claims that Walker asserts on appeal concern the claim he brought in the circuit court alleging he was entitled to relief under CR 60.02(e) because the 1975 judgment of conviction against him was void on the basis that it had not been signed by the trial court. On the following alternative bases, we find that Walker’s claims lack all merit.

First, Walker’s claim is moot. Once a defendant has served his full sentence, even where the court determines that no sentence should have been imposed, there is no relief available that would affect the defendant’s status. *Dillingham v. Commonwealth*, 249 S.W.2d 827, 828 (Ky. 1952) (finding that, when a sentence has been served, any request for relief is moot because the sentence cannot be amended, nor is any other action available to change the status of the judgment). Because Walker has served the entirety of his sentence, his claim for relief based upon the 1975 judgment is moot.

Second, Walker failed to present any evidence, or even allege, how he is prejudiced in any way as a result of the 1975 judgment. While the Commonwealth argues that Walker, in seeking to have the 1975 judgment vacated, is attempting to eradicate a basis for his current persistent felony offender charge,<sup>2</sup>

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<sup>2</sup> According to Court Net, Walker is currently serving time for one count of use of a minor under eighteen in a sexual performance, four counts of use of a minor under sixteen in a sexual performance, five counts of rape in the second degree, three counts of sodomy in the second degree, one count of selling a controlled substance to a minor, one count of possession of marijuana, and one count of use/possession of drug paraphernalia.

Walker makes no similar claim. Neither the Commonwealth nor Walker points this Court to where we can locate in the record that Walker has ever been charged with a persistent felony offense, relying on the 1975 judgment. In fact, a review of Court Net did not indicate that Walker has been charged as a persistent felony offender. Walker is currently serving time on charges which alone would add up to 180 years or more, without classification as a persistent felony offender. Thus, we have nothing before us that convinces us that Walker has ever been charged as a persistent felony offender, and it was his burden to establish this.

Additionally, Walker does not assert any deprivation of civil rights stemming from the conviction at issue, and, in fact, Governor Martha Layne Collins reinstated his civil rights when he was released after serving his sentence for the 1975 judgment. We will not consider his later loss of civil rights due to his subsequent criminal acts because those criminal acts are not the subject of this appeal. As such, Walker asserts no basis upon which this Court can grant relief.

Finally, even if Walker's 1975 judgment was used as a basis for an enhanced sentence, Walker has failed to include the record on appeal regarding his later convictions. "It is the appellant's duty to present a complete record on appeal." *Steel Technologies, Inc. v. Congleton*, 234 S.W.3d 920, 926 (Ky. 2007). Where an appellant fails to show that the lower court has erred by including the portion of the record that would indicate an error, we must assume that the lower court acted correctly. *See Shipman v. Commonwealth*, 94 S.W.2d 32, 33 (Ky. 1936); *see also Meyers v. Monroe*, 226 S.W.2d 782, 784 (Ky. 1950). Furthermore,

a court may correct a clerical error, such as an unsigned judgment, by subsequently signing the judgment. RCr<sup>3</sup> 10.10. Afterwards, the judgment serves as a proper basis for an enhanced sentence. *See Hargrave v. Commonwealth*, 724 S.W.2d 202, 205 (Ky. 1986); *Spears v. Commonwealth*, 462 S.W.2d 931, 931-32 (Ky. 1971); *Green v. Commonwealth*, 413 S.W.2d 329, 330 (Ky. 1967).

Here, Walker presents no evidence and did not supply this Court with any portion of the record pertaining to his later convictions that would indicate that the court failed to ensure that the 1975 judgment was valid prior to presenting it to the jury as a basis for a persistent felony offender charge, *if it was presented or used at all*, to establish a persistent felony offender status. As such, we must assume that the court acted properly.

Accordingly, the order of the Jefferson Circuit Court is affirmed.

TAYLOR, CHIEF JUDGE, CONCURS.

WINE, JUDGE, CONCURS IN RESULT.

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<sup>3</sup> Kentucky Rule(s) of Criminal Procedure.