

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-001969-MR

RONALD EARL WILLIAMS, JR.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JAMES M. SHAKE, JUDGE
ACTION NO. 00-CR-001844

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CAPERTON AND WINE, JUDGES; LAMBERT,¹ SENIOR JUDGE.

WINE, JUDGE: Appellant, Ronald Earl Williams, Jr., appeals the Jefferson

Circuit Court order denying his Kentucky Rule of Civil Procedure (“CR”) 60.02

motion to vacate the judgment against him. After review of the record, we affirm

¹ Senior Judge Joseph E. Lambert sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

on the ground that Williams should have brought his present claims in his prior Kentucky Rule of Criminal Procedure (“RCr”) 11.42 motion.

Williams entered a plea of guilty to the charges of murder, kidnapping, and two counts of first-degree robbery resulting from the kidnapping, robbery, and murder of Keith Alexander and the robbery of Terrance Huguley. Williams confessed to the crimes, and a girlfriend of Williams also told police he had admitted these crimes to her. Subsequently, Williams attempted to withdraw his plea of guilty. Following a hearing on July 1, 2003, the trial court denied that motion. On July 1, 2003, Williams was sentenced to Life without the possibility of parole for twenty-five years.

Williams filed a motion to vacate, set aside, or correct his sentence pursuant to RCr 11.42. Appointed counsel decided not to file a supplemental pleading. That motion was denied by the circuit court on December 22, 2006. Williams then appealed that ruling by the circuit court which was affirmed by this Court.² His appeal for discretionary review to the Supreme Court of Kentucky was denied on April 15, 2009.

Williams subsequently filed the present motion to vacate the judgment against him, pursuant to CR 60.02(e) and (f). Williams alleges that his convictions for capital kidnapping and murder violate the double jeopardy clause of the Fifth Amendment and that his plea was coerced because the Commonwealth had not withdrawn its notice to seek the death penalty. The circuit court denied his motion.

Williams now appeals.

² 2007-CA-000276-MR, 2008 WL 2492256 (June 20, 2008).

On appeal, this Court reviews a CR 60.02 motion for abuse of discretion.

White v. Commonwealth, 32 S.W.3d 83, 86 (Ky. App. 2000). Williams alleges he is entitled to relief under CR 60.02(e) and (f), which state:

On a motion a court may, upon such terms as are just, relieve a party or his legal representative from its final judgment, order, or proceeding upon the following grounds: ... (e) the judgment is void, or has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (f) any other reason of an extraordinary nature justifying relief.

When a defendant avails upon CR 60.02, it is not merely an opportunity to relitigate the same issues which could “reasonably have been presented” on direct appeal or in prior RCr 11.42 proceedings, but as a substitute for the common law writ of *coram nobis*. RCr 11.42(3); *Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983). “CR 60.02 is not a separate avenue of appeal to be pursued in addition to other remedies, but is available only to raise issues which cannot be raised in other proceedings.” *McQueen v. Commonwealth*, 948 S.W.2d 415, 416 (Ky. 1997). “Final disposition of [the RCr 11.42] motion, or waiver of the opportunity to make it, shall conclude all issues that reasonably could have been presented in that proceeding. *Gross, supra.* at 857.

Williams previously brought a motion pursuant to RCr 11.42 and, as such, should have presented all issues which could reasonably have been presented at that time. Since the double jeopardy and coercion claims are both issues which could have been presented in the RCr 11.42 proceedings, his CR 60.02 motion

fails. Further, a claim of relief pursuant to CR 60.02 must be made within a “reasonable time”. We do not find a delay of six years to be reasonable. *Gross v. Commonwealth, supra*.

Finally, even if timely, the claim for any violation of the Double Jeopardy Clause of the Fifth Amendment must also fail. The elements of murder and kidnapping, as a capital offense, may have some common factual basis; however, each requires proof of at least one element not required in the other.

Commonwealth v. Burge, 947 S.W.2d 805 (Ky. 1997).

Therefore, the trial court did not abuse its discretion in denying the defendant’s CR 60.02 motion. The judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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