

# Commonwealth of Kentucky

## Court of Appeals

NO. 2010-CA-000826-MR

LEON HARRIS

APPELLANT

v. APPEAL FROM BOYLE CIRCUIT COURT  
HONORABLE DARREN W. PECKLER, JUDGE  
ACTION NO. 96-CR-00014

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS AND MOORE, JUDGES; ISAAC,<sup>1</sup> SENIOR JUDGE.

COMBS, JUDGE: Leon Harris appeals from an order denying his motion for post-conviction relief pursuant to Kentucky Rule(s) of Civil Procedure (CR) 60.02. He contends that he was deprived of his statutory right to present mitigating evidence during the penalty phase of his capital murder trial. After our review, we affirm.

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<sup>1</sup> Senior Judge Sheila R. Isaac sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

In 1996, a Boyle County jury found Harris guilty of capital murder. He was sentenced to life in prison. On direct appeal, the Supreme Court of Kentucky affirmed his conviction. *Harris v. Commonwealth*, 96-SC-1045-MR (rendered October 30, 1997).

On April 7, 1998, Harris filed a motion to vacate, set aside, or correct his sentence pursuant to Kentucky Rule(s) of Criminal Procedure (RCr) 11.42, contending that he had been denied the effective assistance of trial counsel. The trial court denied his motion for relief. On review, we concluded that Harris had received effective assistance of counsel and affirmed the trial court's order on April 7, 2000.

On October 27, 2006, Harris filed a second post-conviction motion for relief pursuant either to RCr 11.42 or to CR 60.02. The trial court concluded that the issues raised were ones that should have been brought on direct appeal and that the motion was filed outside the three-year statute of limitations provided by RCr 11.42. Consequently, the trial court denied the motion for relief. On review, we concluded that Harris's motion was procedurally barred as a successive RCr 11.42 motion filed out of time. We also concluded that the issues raised in the motion should either have been raised on direct appeal or in his initial collateral attack on the judgment.

On March 4, 2010, Harris filed the underlying motion for relief pursuant to the provisions of CR 60.02. He argued that the trial court's judgment of conviction

was void since the penalty phase of the trial had been conducted improperly, or, in the alternative, that the extraordinary nature of the error justified the relief he sought. The trial court denied the motion, and this appeal followed.

The provisions of CR 60.02 are designed to provide relief where it can be shown that the judgment is void or that some other, **extraordinary** reason exists to warrant relief. CR 60.02(e), (f). 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). The rule expressly provides that a motion pursuant to its provisions “shall be made within a reasonable time.” CR 60.02.

Harris argues that he is entitled to relief because the trial court failed to insure that his trial counsel presented sufficient mitigating evidence during the penalty phase of the trial. He is particularly dissatisfied with his mother’s testimony as elicited by defense counsel and contends that the trial court should have intervened on his behalf. He contends that a proper probing and presentation of his social and psychological background might have established a diminished criminal culpability justifying the imposition of a minimum sentence under the circumstances of his case. Additionally, he contends that this Court must recognize that it erred by affirming the trial court’s denial of his previous motions for relief. We disagree.

While Harris has framed the issue uniquely for purposes of this proceeding, we are not persuaded that his claim could not have been raised on direct appeal or

on a motion for relief filed pursuant to the provisions of RCr 11.42. “Final disposition of [a motion filed pursuant to RCr 11.42] shall conclude all issues that could reasonably have been presented in the same proceeding.” RCr 11.42(3).

Moreover, Harris did not file this motion for relief for more than **twelve years** after his direct appeal had become final. He has shown no justification for the long delay.

Therefore, we affirm the order of the Boyle Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Leon Harris, *pro se*  
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Jack Conway  
Attorney General of Kentucky

William Robert Long, Jr.  
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