

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-000424-MR

TERRY MILLS

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE ROBERT J. HINES, JUDGE
ACTION NO. 02-CR-00037

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS AND MOORE, JUDGES; ISAAC,¹ SENIOR JUDGE.

ISAAC, SENIOR JUDGE: Terry Mills appeals from a McCracken Circuit Court order denying his motion made pursuant to Kentucky Rules of Civil Procedure (CR) 60.02. We affirm.

¹ 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.

On July 31, 2002, Mills entered a plea of guilty to various drug-related offenses, including manufacturing methamphetamine, and to being a persistent felony offender in the first degree. Final judgment was entered on August 6, 2002. More than seven years later, he filed a motion under CR 60.02, arguing that his sentence was illegal under *Kotila v. Commonwealth*, 114 S.W.3d 226 (Ky. 2003), because he was not found in possession of all the ingredients necessary to manufacture methamphetamine;² and that the sentences on his other charges were improperly enhanced. The circuit court denied the motion and this appeal followed.

The record shows that prior to filing the motion that is the subject of this appeal, Mills filed three CR 60.02 motions: on March 25, 2003, June 5, 2003 and June 8, 2004, as well as an RCr 11.42 motion on September 30, 2004.

CR 60.02 is the successor to *coram nobis*,

an extraordinary and residual remedy to correct or vacate a judgment upon facts or grounds, not appearing on the face of the record and not available by appeal or otherwise, which were discovered after the rendition of the judgment without fault of the party seeking relief.

Harris v. Commonwealth, 296 S.W.2d 700, 701(Ky. 1956). CR 60.02 “was never meant to be used as another vehicle to revisit issues that should have been included or could have been included in prior requests for relief. ... CR 60.02 and RCr 11.42 motions are not to be used to relitigate previously determined issues.”

² In *Kotila*, the Kentucky Supreme Court held that the manufacturing statute, Kentucky Revised Statutes (KRS) 218A.1432(1)(b), required the Commonwealth to prove that a defendant possessed all the chemicals or all the equipment necessary to manufacture methamphetamine. *Kotila* has since been superseded by the amendment of the statute in 2005.

Baze v. Commonwealth, 276 S.W.3d 761, 766 (Ky. 2008). Mills's claims could have been included in his prior requests for relief and, in fact, he raised his arguments regarding *Kotila* in the CR 60.02 motion of June 8, 2004 and again in his RCr 11.42 motion in the form of an ineffective assistance of counsel claim. His claims are therefore barred.

Furthermore, movants seeking relief under CR 60.02(a), (b) and (c) must bring their motions within one year after the final judgment; all other claims must be brought within a reasonable time. Seven years elapsed between the date of the final judgment and the filing of Mills's motion. The trial court did not abuse its discretion in ruling that this delay did not constitute a reasonable time.

Accordingly, we affirm the McCracken Circuit Court order denying Mills's motion.

ALL CONCUR.

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