RENDERED: JULY 22, 2011; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-000570-MR

MERTON BOND — APPELLANT

v.

APPEAL FROM NELSON CIRCUIT COURT
HONORABLE JOHN DAVID SEAY, JUDGE
ACTION NO. 83-CR-00048

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, MOORE AND NICKELL, JUDGES.

NICKELL, JUDGE: Merton Bond, *pro se*, has appealed from the Nelson Circuit Court's denial of his successive motion for post-conviction relief pursuant to CR[1] 60.02. We affirm.

[1] Kentucky Rules of Civil Procedure.

In 1983, Bond was convicted following a jury trial on seven counts of rape in the first degree[2] and two counts of rape in the second degree.[3] The jury fixed his punishment at life imprisonment on each of the rape in the first degree counts and at ten years on the remaining two counts. The trial court ordered all of the sentences to run concurrently and sentenced Bond to life imprisonment. His convictions were affirmed by the Supreme Court of Kentucky on direct appeal in 1984.

In 1991, Bond filed his first motion for post-conviction relief under RCr[4] 11.42, alleging various grounds for relief including ineffective assistance of counsel. His motion was denied for failure to comply with the procedural requirements of the rule. Bond filed supplemental pleadings seeking to amend his previously filed RCr 11.42 motion and for a change of venue. The trial court denied these two motions in separate orders. The denials were affirmed on appeal to this Court.

On December 28, 1992, Bond filed his first motion for post-conviction relief pursuant to CR 60.02 reiterating the arguments previously set forth in his RCr 11.42 motion and seeking to have that motion re-opened. The trial court denied the motion. A panel of this Court affirmed the denial.

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[2] Kentucky Revised Statutes (KRS) 510.040, a Class A felony.

[3] KRS 510.050, a Class C felony.

[4] Kentucky Rules of Criminal Procedure.

In 1993, Bond filed a second CR 60.02 motion seeking a downward modification of his sentence to fifteen years citing changes in the sex offender laws, changes in his circumstances, and again referencing his RCr 11.42 motion. The trial court denied the motion and Bond sought reconsideration. The court refused to reconsider and this Court affirmed the denial of post-conviction relief. We noted that Bond acknowledged the issues raised should have been brought in his initial RCr 11.42 motion.

In 1995, Bond filed a third CR 60.02 motion, this time complaining of witness contact with a juror regarding trial testimony. The trial court found the issue was known and available when Bond filed his earlier motions for post-conviction relief, and thus denied the motion. We again affirmed the denial, stating that "the instant proceeding is nothing more than an unsuccessful attempt at a fifth 'bite at the apple.'"[5]

In 1996, Bond filed his fourth CR 60.02 motion, again seeking modification of his sentence. The trial court denied the motion and Bond's request for reconsideration. The denial was affirmed on appeal to this Court.

In 1997, Bond filed his fifth CR 60.02 motion seeking a reduction in his sentence. The motion was denied as was Bond's subsequent request for reconsideration. We affirmed the trial court's denial and found the appeal to be wholly without merit.

[5] *Bond v. Commonwealth*, 1995-CA-001898-MR, unpublished (April 11, 1997).

Bond filed his sixth CR 60.02 motion seeking a sentence reduction in 1999. The trial court again denied relief and refused Bond's request for reconsideration. The trial court did, however, order the Department of Corrections to evaluate Bond for eligibility for prerelease probation. Following the evaluation, the trial court entered an order noting that the Department of Corrections authorities had found Bond ineligible for prerelease probation as he had failed to complete sex offender treatment and was issued a "serve out" by the parole board in 1991. Bond moved for reconsideration which was denied. Bond began the process of appealing the denials, but the record does not reveal that such an appeal actually ensued.

On February 9, 2010, Bond filed the instant CR 60.02 motion seeking a reduction in his sentence from life imprisonment to thirty years. The trial court denied the motion on March 8, 2010, finding it was without jurisdiction to modify a sentence imposed over a quarter of a century earlier, and that such requests should be made to the Executive Branch of state government rather than the Judicial Branch. Bond's request for reconsideration was subsequently denied. Bond filed a notice of appeal and requested appointment of counsel. The request was granted and the Department of Public Advocacy (DPA) was appointed to represent Bond on appeal. DPA requested to withdraw from the matter and was permitted to do so by order of this Court entered on July 7, 2010.

Bond failed to timely file a brief in this Court and a show cause order was issued. In response, Bond alleged he had filed another motion for relief in the

Nelson Circuit Court which was denied on June 25, 2010, and that in the notice of appeal from that denial he had requested consolidation with the present appeal. He also noted the trial court had again appointed DPA to represent him. On October 25, 2010, a panel of this Court found Bond had shown sufficient cause to prevent dismissal, permitted DPA to withdraw from representing Bond, and ordered Bond to file his brief within sixty days. His *pro se* brief was timely tendered. We affirm.

We review the denial of a CR 60.02 motion for an abuse of discretion. *Brown v. Commonwealth*, 932 S.W.2d 359, 362 (Ky. 1996); *Gross v. Commonwealth*, 648 S.W.2d 853, 858 (Ky. 1983). "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999). Motions under CR 60.02 are "not intended merely as an additional opportunity to relitigate the same issues which could 'reasonably have been presented' by direct appeal or RCr 11.42 proceedings." *McQueen v. Commonwealth,* 948 S.W.2d 415, 416 (Ky. 1997) (citations omitted). 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." *Id*. It is well-settled that where a motion for post-conviction relief is merely one of many successive motions only stating grounds that were raised or could have been raised in a prior motion, denial of the motion will not be reviewed on appeal. *Hampton v. Commonwealth,* 454 S.W.2d 672 (Ky. 1970).

Bond has previously requested modification or reduction of his sentence in many of his numerous motions for post-conviction relief. The trial court has repeatedly denied his requests for relief on these grounds and Bond availed himself of his right to appeal from those adverse judgments. The denials were affirmed by this Court in each case. "Our courts do not favor successive collateral challenges to a final judgment of conviction which attempt to relitigate issues properly presented in a prior proceeding." *Stoker v. Commonwealth*, 289 S.W.3d 592, 597 (Ky. App. 2009). Bond has had seven prior unsuccessful "bites at the apple." His eighth effort is merely a rehash of his prior failed attempts. Therefore, we cannot say the trial court abused its discretion in denying Bond's successive motion which alleged no new grounds for the relief he sought.

Therefore, for the foregoing reasons, the judgment of the Nelson Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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