

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

NO. 2010-CA-001095-MR

TEKO HATFIELD

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE BARRY WILLETT, JUDGE  
ACTION NO. 98-CR-000958

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE AND WINE, JUDGES; LAMBERT,<sup>1</sup> SENIOR JUDGE.

LAMBERT, SENIOR JUDGE: Teko Hatfield has appealed from the Jefferson Circuit Court's summary denial of his motion for post-conviction relief without first convening an evidentiary hearing. We affirm.

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<sup>1</sup> 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 Kentucky Revised Statute (KRS) 21.580.

Following a jury trial, Hatfield was convicted of wanton murder<sup>2</sup> and robbery in the first degree.<sup>3</sup> When the jury could not reach an agreement during deliberations in the penalty phase, Hatfield agreed to a sentence of life without the possibility of parole for twenty-five years on the wanton murder charge and twenty years on the robbery charge. The twenty-year sentence was enhanced to life as a result of his being a persistent felony offender in the first degree (PFO I).<sup>4</sup> The facts underlying Hatfield's conviction were set forth in the decision of the Supreme Court of Kentucky affirming his direct appeal.

Hatfield was charged with the murder of Edward Powers and the first-degree robbery of Powers and James (Rick) Tilford. A codefendant, Tyrone Thomas, was also charged with the murder of Powers but he pled guilty to tampering with physical evidence and received a five-year sentence that was enhanced to eight years as a PFO II. As part of his plea agreement, he testified against Hatfield.

The fatal events occurred in the kitchen and living room of a house in Jefferson County in the early morning hours of March 31, 1998. The victim of the murder was killed by a bullet fired from an SKS rifle during the course of a struggle and robbery. The bullet pierced the femur of his left thigh and struck the femoral artery and vein. There were five persons present at the time of the incident, the victim of the murder, the victim of the robbery, the accused and his codefendant, and a then 15-year-old witness. Tilford, Thomas and the 15-year-old witness testified at trial and Hatfield and the three witnesses gave the police statements, none of which matched. There

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<sup>2</sup> KRS 507.020(1)(b), a capital offense.

<sup>3</sup> KRS 515.020, a Class B felony.

<sup>4</sup> KRS 532.080.

were approximately twenty other people at the house, which the prosecutor described as a crack house.

The 15-year-old witness testified that he was standing outside the house when he heard several people arguing about money and saw three people in the living room wrestling over a gun. He did not know any of the people involved in the argument or shooting. Although he did not testify at trial, Hatfield told police that he did not fire the weapon. The jury convicted Hatfield of the wanton murder of Powers and the first-degree robbery of Tilford. He was acquitted of the robbery charge against Powers.

*Hatfield v. Commonwealth*, 2000-SC-0956-MR, slip op. at \*2-3 (rendered May 16, 2002, designated not-to-be-published).

Hatfield filed a *pro se* motion for post-conviction relief pursuant to RCr<sup>5</sup> 11.42 on February 24, 2003. The trial court denied the motion without convening an evidentiary hearing. Hatfield appealed the denial to this Court. On May 24, 2004, Hatfield filed the instant *pro se* motion for relief pursuant to CR<sup>6</sup> 60.02 and RCr 10.26. The trial court held the motion in abeyance pending the outcome of Hatfield's appeal. On December 3, 2004, this Court remanded the matter to the trial court for an evidentiary hearing. *Hatfield v. Commonwealth*, 2003-CA-1509-MR. The trial court convened the hearing and denied relief. Hatfield's subsequent appeal to this Court from that denial was affirmed on August 21, 2009. *Hatfield v. Commonwealth*, 2008-CA-001292-MR. On May 4, 2010, the trial court denied Hatfield's CR 60.02 motion upon finding all of the issues presented therein had or

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<sup>5</sup> Kentucky Rules of Criminal Procedure.

<sup>6</sup> Kentucky Rules of Civil Procedure.

could have been raised on direct appeal or in his prior collateral attack. This appeal followed.

Hatfield raises two allegations of error in seeking reversal of the trial court's denial of his motion for relief. First, he argues the trial court erred in failing to treat his CR 60.02 motion as a supplement to his earlier RCr 11.42 motion, *sua sponte* consolidate the two motions, and resolve all of his claims at the same time. Next, he contends the trial court improperly amended the final judgment to include aggravating circumstances not specifically found by the jury. Following a careful review of the record, the briefs and the law, we affirm.

Initially, we note that neither of the claims of error argued in this appeal was raised in the trial court. It is axiomatic that to be preserved for appellate review, the trial court must be given the opportunity to rule on an alleged error. *Swatzell v. Commonwealth*, 962 S.W.2d 866, 868 (Ky. 1998), *overruled on other grounds by Rapier v. Philpot*, 130 S.W.3d 560, 564 (Ky. 2004). A defendant “will not be permitted to feed one can of worms to the trial judge and another to the appellate court.” *Kennedy v. Commonwealth*, 544 S.W.2d 219, 222 (Ky. 1976) (citations omitted). Hatfield has acknowledged his allegations are likely unpreserved for our review and has requested review under the palpable error standard set forth in RCr 10.26.

Under that rule, an unpreserved error may be noticed on appeal only if the error is “palpable” and “affects the substantial rights of a party,” and even then relief is appropriate only “upon a determination that manifest injustice has resulted from the error.” An error is

“palpable,” we have explained, only if it is clear or plain under current law, *Brewer v. Commonwealth*, 206 S.W.3d 343 (Ky. 2006), and in general a palpable error “affects the substantial rights of a party” only if “it is more likely than ordinary error to have affected the judgment.” *Ernst v. Commonwealth*, 160 S.W.3d 744, 762 (Ky. 2005). . . . An unpreserved error that is both palpable and prejudicial still does not justify relief unless the reviewing court further determines that it has resulted in a manifest injustice, unless, in other words, the error so seriously affected the fairness, integrity, or public reputation of the proceeding as to be “shocking or jurisprudentially intolerable.” *Martin v. Commonwealth*, 207 S.W.3d 1, 4 (Ky. 2006).

*Commonwealth v. Jones*, 283 S.W.3d 665, 668 (Ky. 2009). We shall review Hatfield’s allegations with this standard in mind.

Hatfield first argues the trial court erred in failing to treat his CR 60.02 motion as a supplement to his earlier RCr 11.42 motion. He contends that although he filed the two motions a significant time apart under two separate rules alleging differing errors, the trial court should have *sua sponte* determined the latter was a supplement to the former, consolidated the two motions, and resolved all of his claims at the same time. He cites us to no authority supportive of his position and we believe none exists.

RCr 11.42(3) requires the motion to state all grounds known to the movant that would justify invalidating his sentence. There is no allegation that Hatfield was unaware of the claims raised in his CR 60.02 motion at the time he filed his initial RCr 11.42 motion. The alleged ineffectiveness of his trial counsel in advising him to enter a guilty plea was an issue that should have been known and

raised in his direct appeal or original motion for post-conviction relief. Further, although Hatfield was represented by counsel at the hearing on his RCr 11.42 motion, no mention was made of the pending CR 60.02 motion nor a request for the trial court to consider it at the same time as the RCr 11.42 motion. We are unable to conclude under these facts that the trial court palpably erred in its handling of Hatfield's post-conviction motions.

Hatfield next contends the trial court improperly amended the final judgment to include aggravating circumstances not specifically found by the jury. We disagree.

Final judgment was entered on September 19, 2000. Two days later, the Commonwealth moved the trial court to amend the judgment to set forth the aggravating circumstances applicable to Hatfield to make the sentence conform to the requirements of KRS 532.025(3). Specifically, the Commonwealth asked the trial court to find that Hatfield committed the wanton murder while he was engaged in the crime of robbery in the first degree and that he had a substantial history of serious assaultive convictions. The trial court entered its amended judgment in conformity with the Commonwealth's request on October 6, 2000.

In his CR 60.02 motion, Hatfield contended the amended judgment was invalid as it was entered more than ten days after the original judgment was entered. He now contends the amended judgment is infirm because the trial court improperly increased his punishment and thereby usurped the function of the jury. We disagree and conclude no error occurred.

Hatfield entered into a negotiated plea with the Commonwealth. The trial court conducted a thorough plea colloquy prior to accepting the agreement to ensure Hatfield was aware he was entitled to be sentenced by a jury. Hatfield waived that right. The final judgment set forth Hatfield's sentence in conformity with the agreement. The amended judgment did not increase Hatfield's sentence but rather included the language necessary to comply with the statutory requirements underlying the negotiated sentence. There is no allegation that the statutory factors were inapplicable to Hatfield. He was clearly convicted of robbery in the first degree and wanton murder resulting from the same incident. His criminal history is also undisputed and he was found to be a PFO I indicating his propensity toward criminal endeavors. We discern no prejudicial effect of the trial court's amending the judgment to comply with the statutory language. There was no error, much less palpable error.

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

ALL CONCUR.

BRIEFS FOR APPELLANT:

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