

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000751-MR

LESLIE SMITH

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE A.C. MCKAY CHAUVIN, JUDGE
ACTION NO. 06-CR-002508

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JONES, STUMBO AND VANMETER, JUDGES.

JONES, JUDGE: Leslie Smith appeals from the January 30, 2014, order of the Jefferson Circuit Court which denied Smith's motion to set aside and vacate his 2007 conviction of failure to notify of change of address. Smith also appeals from the February 14, 2014, order which denied his motion to alter, amend, or vacate the

January 30, 2014, order. For the reasons more fully explained below, we

AFFIRM.

I. BACKGROUND

In 2006, Smith was indicted for failing to notify the sex offender registry of his address change. Smith filed several motions seeking dismissal of the charge on the ground that he was not subject to the sex offender registration act ("SORA"). Smith's motions were denied. Ultimately, Smith entered a guilty plea pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970). The circuit court entered a final judgment of conviction and sentence on May 15, 2007.

On November 3, 2011, Smith filed a motion, pursuant to Kentucky Rules of Civil Procedure (CR) 60.02, asking the circuit court to vacate his 2007 final judgment of conviction and sentence. Therein, Smith revived his prior argument that he had been improperly subjected to the sex offender registration requirements.

The circuit court denied Smith's motion on June 21, 2013. Thereafter, Smith filed a second CR 60.02 motion which contained the same argument as his prior motion. The circuit court denied Smith's second CR 60.02 motion on January 30, 2014. Smith then filed a motion to alter, amend, or vacate the January 30, 2014 order. The circuit court denied that motion on February 14, 2014. This appeal followed.

On appeal, Smith raises several arguments. As a preliminary matter, he asserts that the circuit court should have conducted a hearing on the merits of his CR 60.02 motion. Substantively, he claims SORA is unconstitutional as applied to his case, violates ex post facto protections, and amounts to a bill of attainder.

II. STANDARD OF REVIEW

We review a trial court's ruling on a CR 60.02 motion under an abuse of discretion standard. *White v. Commonwealth*, 32 S.W.3d 83, 86 (Ky. App. 2000). "The test for an abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Anderson v. Commonwealth*, 231 S.W.3d 117, 119 (Ky. 2007) (citing *Goodyear Tire & Rubber Co. v. Thompson*, 11 S.W.3d 575, 581 (Ky. 2000)).

III. ANALYSIS

In general, CR 60.02 can serve to relieve a party of a trial court's final judgment on such grounds as mistake, newly discovered evidence, fraud, or other extraordinary reasons which would justify relief. CR 60.02(a) – (f). In addition, motions under CR 60.02 must be made "within a reasonable time." CR 60.02.

The purpose of CR 60.02 is to bring before a court errors which (1) had not been put into issue or passed on, and (2) were unknown and could not have been known to the moving party by the exercise of reasonable diligence and in time to have been otherwise presented to the court.

Young v. Edward Technology Group, Inc., 918 S.W.2d 229, 231 (Ky. App. 1995).

"CR 60.02 is neither a substitute for, nor a separate avenue of, appeal. Its purpose is only to raise issues which cannot be raised in other proceedings, and therefore a movant must show that she is entitled to extraordinary relief." *Queen v. Commonwealth*, 948 S.W.2d 415 (Ky. 1997). Smith's CR 60.02 motion brought forth a previous argument that was known at the time of the final judgment. This is clearly demonstrated by the record. The argument was presented in Smith's motions to dismiss and was ruled upon prior to the entry of his *Alford* plea. In addition, Smith's argument was waived at the time of his plea. *See Sparks v. Commonwealth*, 721 S.W.2d 726, 727 (Ky. App. 1986) (holding that a plea of guilty constitutes a waiver of all defenses other than that the indictment charged no offense). Accordingly, we find no error with the trial court's denial of Smith's motion for CR 60.02 relief.

"A movant is not entitled to a hearing on a CR 60.02 motion unless he affirmatively alleges facts which, if true, justify vacating the judgment and further alleges special circumstances that justify CR 60.02 relief." *White* 32 S.W.3d at 86. As noted above, Smith failed to allege any such special circumstances. Accordingly, we hold that the trial court did not abuse its discretion when it denied Smith's CR 60.02 motion without holding an evidentiary hearing.

For the foregoing reasons, the January 30, 2014, and February 14, 2014, orders of the Jefferson Circuit Court are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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