

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2014-CA-001509-MR

KEITH R. GUY, SR.

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE JAMES D. ISHMAEL, JR., JUDGE  
ACTION NO. 00-CR-00070

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CLAYTON, KRAMER AND STUMBO, JUDGES.

STUMBO, JUDGE: Keith R. Guy, *pro se*, appeals from the Fayette Circuit Court order denying his motion to vacate, set aside, or correct his sentence pursuant to Kentucky Rules of Civil Procedure (CR) 60.02(f). Having reviewed the record, we affirm.

In 2002, Guy was convicted by a jury for the kidnapping and first-degree sodomy of a child less than twelve (12) years of age. In 2004, Guy's conviction was affirmed by the Supreme Court of Kentucky in a matter-of-right appeal in Case No. 2002-SC-000412 (rendered January 22, 2004). In 2007, we affirmed the trial court's denial of Guy's motion for post-conviction relief filed pursuant to the provisions of Kentucky Rules of Criminal Procedure (RCr) 11.42 in Case No. 2005-CA-002588 (rendered June 1, 2007). In 2013, we affirmed the trial court's denial of Guy's motion to vacate the judgment of conviction pursuant to CR 60.02(f) in Case No. 2012-CA-001127 (rendered May 10, 2013). The Appellant is again before the Court, but is now seeking review of the trial court's August 27, 2014 order denying his second CR 60.02(f) motion.<sup>1</sup>

In conducting a review of a lower court's decision to deny a post-conviction collateral motion, we will affirm the court's decision unless there is a showing of some "flagrant miscarriage of justice." *Gross v. Commonwealth*, 648 S.W.2d 853, 858 (Ky. 1983). This Court will review the denial of a CR 60.02 motion under an abuse of discretion standard. *Brown v. Commonwealth*, 932 S.W.2d 359, 362 (Ky. 1996); *White v. Commonwealth*, 32 S.W.3d 83, 86 (Ky. App. 2000). "[Civil Rule] 60.02 is an exceptional remedy necessitating cautious application." *Edwards v. Headcount Management*, 421 S.W.3d 403, 404 (Ky. App. 2014) (citation omitted). However, motions under CR 60.02(f) must be

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<sup>1</sup> In the August 27, 2014 order, the trial court granted Guy's request to proceed *In Forma Pauperis*, but denied his request to suppress the search warrant in the underlying case and denied his request to vacate his sentence. The trial court also issued an order denying Guy's motion for reconsideration on September 5, 2014.

brought within a reasonable time. CR 60.02 exists not as a second bite at the apple, but to provide relief that is unavailable by either direct appeal or RCr 11.42 motion. *Gross* at 857. And neither is “CR 60.02 ... intended ... as an additional opportunity to relitigate the same issues which could ‘reasonably have been presented’ by direct appeal or by RCr 11.42.” *Stoker v. Commonwealth*, 289 S.W.3d 592, 597 (Ky. App. 2009) (citation and footnote omitted). Relief under CR 60.02 is appropriate “only under the most unusual and compelling circumstances.” *Age v. Age*, 340 S.W.3d 88, 94 (Ky. App. 2011) (citation omitted). CR 60.02 allows appeals based upon claims of error that “were unknown and could not have been known to the moving party by 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) (citation omitted).

This Court also notes that prisoner *pro se* pleadings are not held to the same standards as if written by a member of the Bar, and courts afford such litigants some margin of freedom, but not freedom to act *carte blanche*, in proffering proper arguments of law. *Commonwealth v. Miller*, 416 S.W.2d 358, 360 (Ky. 1967). Prisoner *pro se* litigants are given slight latitude in their pleadings but those pleadings must contain claims of merit and adhere to the mandates for review of the statute or rule under which the prisoner is seeking relief. An appellant is not allowed to merely use appeals as a means of reciting various grievances. Appellant pleadings must be structured to focus on the most recent underlying order and the law purported to support the movant’s position in

attacking the decisions in that order. The granting of relief under CR 60.02(f) is discretionary and neither the appointment of counsel, nor the holding of an evidentiary hearing, are mandatory before a trial court may render decision on the motion.

The Court undertakes its review of post-conviction motions with a level of seriousness equal to any case or request for relief filed before it, whether civil or criminal in nature. With that being said, the Court has diligently reviewed the pleadings filed in this second CR 60.02 filed by Keith Guy over the same criminal conviction and facts discussed in the prior appeals and motions, as cataloged above. In this action, Guy outlines an assortment of claims which are, at times, difficult to decipher. But to the best of our ability, we have done so and the issues raised by Guy in this latest appeal are as follows. First, Guy alleges the trial court abused its discretion by denying his claim on the veracity and credibility of the victim and abused its discretion by not holding a hearing on this issue. Next, Guy says the trial court abused its discretion by not holding a hearing on his claim of improper venue and jurisdiction for the underlying indictment and trial. Third, Guy alleges the trial court abused its discretion by failing to hold a hearing on his claim that the indictment was impermissibly amended after a true bill was returned on his indictment. And last, Guy argues the trial court abused its discretion in not holding a hearing on the issue that contaminated evidence was used to convict him at trial.

The Court has reviewed Appellant's latest round of filings and finds that all of the claims, as enumerated above, are ones that could and should have been brought within Guy's direct appeal, in his RCr 11.42 action or in his first CR 60.02 action. The appellant has presented no argument or issues of an extraordinary nature and certainly none that were not able to be presented during the thirteen years since his conviction thereby allowing him to overcome the necessary standard of seeking CR 60.02(f) relief in a reasonable time, as required under *Gross v. Commonwealth*. The burden falls upon Guy to demonstrate his claims should be deemed reasons of an extraordinary nature justifying relief under 60.02(f) and the evidence supporting such claims was not discoverable at an earlier time. *See generally Young, supra*. We have not found support in the record to indicate that Guy has met this burden.

Guy's successive attempts at biting the same apple cannot change his failure to act timely or the lack of merit of his claims. This Court is not convinced Guy's pleas for review and relief are extraordinary or urgent or that evidence exists indicating the judgment of conviction would not have been rendered and a miscarriage of justice occurred. *Harris v. Commonwealth*, 296 S.W.2d 700, 702 (Ky. 1956). The Court notes that according to the trial court's August 27, 2014 order, Guy had specifically moved to have the search warrant from his underlying criminal case suppressed. The trial court denied his motion on this issue for three reasons: it was deemed untimely, the issue was waived since it was not presented in prior appeals and the issue was without merit when analyzed against the weight

of the evidence in the original trial record. Additionally, the trial court also specifically denied Guy's request to vacate his sentence.

### CONCLUSION

For the foregoing reasons, the order of the Fayette Circuit Court denying the CR 60.02(f) motion is AFFIRMED.

ALL CONCUR.

#### BRIEF FOR APPELLANT:

Keith R. Guy, *pro se*  
Eastern Kentucky Correctional  
West Liberty, Kentucky

#### BRIEF FOR APPELLEE:

Jack Conway  
Attorney General

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Assistant Attorney General  
Frankfort, Kentucky