

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-001565-MR

ANTOINE DUPREE JACKSON

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE KIMBERLY N. BUNNELL, JUDGE
ACTION NO. 11-CR-00041

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: COMBS, NICKELL AND VANMETER, JUDGES.

NICKELL, JUDGE: Antoine Jackson appeals an order of the Fayette Circuit Court denying his Kentucky Rules of Civil Procedure (CR) 60.02 motion to correct the final judgment convicting him of multiple criminal offenses. Jackson argues the indictment violated double jeopardy and he was entitled to an evidentiary hearing on the motion. Discerning no error, we affirm.

Jackson was indicted by a grand jury for robbery in the first degree,¹ assault in the first degree,² being a convicted felon in possession of a handgun,³ possession of marijuana,⁴ failure to wear a seatbelt,⁵ and being a persistent felony offender in the first degree.⁶ Jackson's motion to consolidate the robbery and assault charges was denied. Pursuant to a plea agreement, Jackson pled guilty to the amended charges of robbery in the second degree⁷ and assault in the first degree. All other charges were dismissed. He was sentenced to an aggregate of fifteen years' imprisonment. After almost a year had passed, Jackson filed a CR 60.02 motion claiming the indictment violated the Fifth and Fourteenth Amendment prohibitions against double jeopardy. The trial court denied his motion without a hearing, stating CR 60.02 was not the proper vehicle for post-conviction relief on a claim of double jeopardy. This appeal followed.

CR 60.02 applies only where the issues could not have been raised in another proceeding. In a criminal action, the correct procedure for a defendant

¹ Kentucky Revised Statutes (KRS) 515.020, a Class B felony.

² KRS 508.010, a Class B felony.

³ KRS 527.040, a Class C felony.

⁴ KRS 218A.1422, a Class A misdemeanor.

⁵ KRS 189.125(6), a violation.

⁶ KRS 532.080(3).

⁷ KRS 515.030, a Class C felony.

“aggrieved by a judgment” is to first directly appeal that judgment. *Gross v.*

Commonwealth, 648 S.W.2d 853, 857 (Ky. 1983).

Next . . . a defendant is required to avail himself of [Kentucky Rules of Criminal Procedure (RCr)] 11.42 while in custody under sentence or on probation, parole or conditional discharge, as to any ground of which he is aware, or should be aware, during the period when this remedy is available to him. . . . The language of RCr 11.42 forecloses the defendant from raising any questions under CR 60.02 which are “issues that could reasonably have been presented” by RCr 11.42 proceedings.

Id. CR 60.02 is intended only “for relief that is not available by direct appeal and not available under RCr 11.42.” *Id.* at 856. “CR 60.02 is not a separate avenue of appeal in addition to other remedies, but is available only to raise issues which cannot be raised in other proceedings.” *McQueen v. Commonwealth*, 948 S.W.2d 415, 416 (Ky. 1997).

During his plea colloquy, Jackson knowingly and intelligently waived his right to directly appeal his conviction. A voluntary, unconditional guilty plea waives all defenses other than the indictment did not charge an offense. *Thompson v. Commonwealth*, 147 S.W.3d 22, 39 (Ky. 2004). Jackson’s waiver encompassed all issues that might have been properly brought on direct appeal, including a claim of an alleged double jeopardy violation. Therefore, his CR 60.02 claim for relief based on an alleged double jeopardy violation does not meet the requirement that such “relief is not available by direct appeal and not available under RCr 11.42,” *Gross*, 648 S.W.2d at 856, and the trial court properly overruled the motion.

Based on the foregoing, the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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