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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-001978-MR

CHARLES O'DELL SHORES

APPELLANT

v. APPEAL FROM WHITLEY CIRCUIT COURT
HONORABLE PAUL K. WINCHESTER, JUDGE
ACTION NO. 98-CR-00055

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: JONES, D. LAMBERT, AND THOMPSON, JUDGES.

JONES, JUDGE: The Appellant, Charles O'Dell Shores, brings this appeal as a matter of right from a Whitley Circuit Court order denying his Kentucky Rules of Civil Procedure ("CR") 60.02 motion. For the reasons set forth below, we
AFFIRM.

I. Factual and Procedural Background

On the morning of April 14, 1998, Willis Knuckles, the victim, was found dead in his Whitley County residence having suffered a single gunshot to the head. On June 8, 1998, Appellant was indicted for murder and robbery in the first degree by the Whitley County grand jury. Originally, Appellant agreed to plead guilty to second-degree manslaughter in exchange for the Commonwealth recommending a six-year prison sentence. The plea agreement, however, was never finalized. Accordingly, Appellant was brought to trial on the aforementioned charges in the Whitley Circuit Court on September 25, 2001.

Following a three-day trial, the jury returned guilty verdicts on both the murder and first-degree robbery charges. The jury recommended Appellant receive a prison term of fifty years on the murder charge and ten years on the robbery charge, to run consecutively for a total of sixty years. At the sentencing hearing, the trial court adopted the jury's recommendation and sentenced Appellant accordingly. Appellant's conviction and sentence were affirmed by the Kentucky Supreme Court on direct appeal. *See Shores v. Commonwealth*, No. 2002–SC–0033–MR, 2003 WL 21993679 (Ky. Aug. 21, 2003). Appellant then filed a motion pursuant to Kentucky Rules of Criminal Procedure (RCr 11.42) seeking to have his conviction and sentence vacated based on ineffective assistance of counsel. The circuit court denied Appellant's motion. This Court affirmed the denial. *See Shores v. Commonwealth*, No. 2004-CA-000080-MR, 2005 WL 3544257 (Ky. App. Dec. 29, 2007). Next, Appellant filed a CR 60.02 motion with

the circuit court, which it also denied. Appellant attempted to appeal that denial, but we dismissed the appeal as untimely.

This brings us to Appellant's most recent CR 60.02 motion, which is the subject of this appeal. In his motion, Appellant argued that his right to an impartial jury was denied during his first trial because of a newspaper article that ran in the local paper on the second day of his trial. Appellant claimed that the article was prejudicial to him because it described the failed plea agreement. Appellant believes that if the jury read the article, they would infer guilt from the fact that he had been willing to admit that he was guilty of manslaughter. He also believes that the plea undermined his defense that he merely found the victim shot in the head, but that he was not the shooter. The trial court denied Appellant's motion. This appeal followed.

II. Analysis

In relevant part, CR 60.02 provides that a court may “relieve a party or his legal representative from its final judgment, order, or proceeding upon the following grounds: ... (f) any other reason of an extraordinary nature justifying relief. The motion shall be made within a reasonable time.”

CR 60.02 is not intended merely as an additional opportunity to raise [] defenses. It is for relief that is not available by direct appeal and not available under RCr 11.42. The movant must demonstrate why he is entitled to this special, extraordinary relief. Before the movant is entitled to an evidentiary hearing, he must affirmatively allege facts which, if true, justify vacating the judgment

and further allege special circumstances that justify CR 60.02 relief.

Gross v. Commonwealth, 648 S.W.2d 853, 856 (Ky. 1983). The trial court has the discretion to decide whether relief under CR 60.02 is appropriate. *Foley v. Commonwealth*, 425 S.W.3d 880, 884 (Ky. 2014).

The newspaper article in question was published on September 26, 2001, over a decade before Appellant filed his motion. Appellant asserts that he was prevented from learning about the article during his trial because he was in custody. However, Appellant was represented by counsel during his trial and his counsel certainly would have had access to the article during trial. Additionally, Appellant offers no explanation why it took him over ten years after trial to discover the article or when and how he did so. We believe that Appellant could have raised this issue long before now making it inappropriate to justify relief under CR 60.02. *See McQueen v. Commonwealth*, 948 S.W.2d 415, 416 (Ky. 1997) ("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.").

Additionally, Appellant has offered no proof that any member of his jury ever read the article. He merely alleges that *if* a juror read the article it *could* have been prejudicial. Such speculative allegations are insufficient to justify relief under CR 60.02. *Gross*, 648 S.W.2d at 856.

III. Conclusion

For the foregoing reasons, we find no abuse of discretion. Therefore, we affirm the Whitley Circuit Court.

D. LAMBERT, JUDGE, CONCURS.

THOMPSON, JUDGE, CONCURS IN RESULT ONLY.

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