

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-000626-MR

CRAIG ROGERS

APPELLANT

v. APPEAL FROM CALLOWAY CIRCUIT COURT
HONORABLE DENNIS R. FOUST, JUDGE
ACTION NO. 04-CR-00102

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JONES, MAZE, AND NICKELL, JUDGES.

NICKELL, JUDGE: Craig Rogers challenges an order entered by the Calloway Circuit Court on March 26, 2015, denying a successive collateral attack, this time under CR¹ 60.01, on his 2004 guilty plea to a charge of sodomy in the first degree²

¹ Kentucky Rules of Civil Procedure.

² Kentucky Revised Statutes 510.070, a Class A or B felony depending upon age of victim and whether serious physical injury occurred.

and resulting twenty-year sentence. Having reviewed the briefs, the law and the record, we affirm.

After being indicted in April 2004, Rogers accepted the Commonwealth's offer on a guilty plea and was ultimately convicted of first-degree sodomy on August 31, 2004. In January 2005, he filed an RCr³ 11.42 motion claiming he had received ineffective assistance of counsel because a psychiatric evaluation had not been requested. The motion was denied in March 2005 because there had been no showing of any basis for conducting such an exam. A panel of this Court affirmed the denial in *Rogers v. Commonwealth*, 2005-CA-000901-MR, 2006 WL 2033953 (Ky.App. July 21, 2006) (unpublished).

In 2008, Rogers sought court records to help him prepare an appeal. That motion was denied by the trial court because he was not entitled to help to go on a fishing expedition. A panel of this Court affirmed the denial in *Rogers v. Commonwealth*, 2008-CA-002183-MR, 2010 WL 668670 (Ky.App. Feb. 26, 2010) (unpublished).

Rogers next filed a CR 60.02 motion in April 2011, this time asking the trial court to change his conviction from first-degree sodomy to attempted rape. The motion was denied as being "legally baseless." No appeal was filed.

In March 2015, still unhappy with the bargain he had struck with the Commonwealth in 2004, Rogers filed a CR 60.01 motion claiming no presentence

³ Kentucky Rules of Criminal Procedure.

investigation (PSI) report and sex offender assessment had been completed. In

denying the request for relief, the trial court stated in full:

This matter came before the Court on [Rogers'] *pro se* motion to correct clerical mistake pursuant to CR 60.01. The court has reviewed the motion and would note that while the motion is styled as noted above, it is actually a rehash, albeit with a new legal theory, of defendant's prior unsuccessful Rcr (sic) 11.42 motion to vacate. The court would also note that the prior motion to vacate was denied by this court, which order was affirmed by the Kentucky Court of Appeals.

However, to quickly address the issue raised, even though the issue is not timely, hence the styling of the motion under CR 60.01, it appears that the newest theory of defendant is that the court did not receive a sex offender risk assessment as required by law. Defendant also rehashes his prior unsuccessful Rcr (sic) 11.42 issues regarding his mental competency. Unfortunately for defendant, the court did and does bother to review the records, which in this case, include a sex offender risk assessment which was made a part of the record in this case and which was also sent and stamped as a part of the record which was sent to the Court of Appeals. To be on the safe side, this court, in consideration of this motion, opened the sealed envelope to reacquaint itself with [Rogers'] case and to confirm that [his] assertions were incorrect.

That being the case, [Rogers] has stated no basis for relief in that there is no clerical error to correct, and [his] motion is DENIED.

Upon reading the above-quoted order, this Court opened the sealed envelope and confirmed for itself a completed Comprehensive Sex Offender Presentence Evaluation for Rogers was faxed to the trial court on August 20, 2004. That four-page report was based in part on a three and one-half hour interview with Rogers on August 16, 2004. During that interview, Rogers "was advised that his attorney

and the Commonwealth Attorney will receive copies of this report.” The evaluation also referenced a “PSI dated 07-30-04[.]” Furthermore, in summarizing Rogers’ account of the sexual activity to which he had previously pled guilty, the examiner wrote, Rogers

admitted . . . that due to the damaging effects of methamphetamine abuse (over the past two months) and his daily abuse of marijuana, he found that he had fantasized about sexual contact with the 6-year-old daughter of his live-in girlfriend.

When Rogers acted upon those fantasies, the charge of first-degree sodomy was leveled against him. It is entirely possible Rogers’ admitted drug use has caused him to forget events that are clearly documented by the trial court record.

Based upon the foregoing, we discern no error and affirm the denial of CR 60.01 relief.

ALL CONCUR.

BRIEF FOR APPELLANT:

Craig Rogers, *pro se*
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BRIEF FOR APPELLEE:

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