

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-000647-MR

EARL MCFALL

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE F. KENNETH CONLIFFE, JUDGE
INDICTMENT NO. 155111

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: GUDGEL, CHIEF JUDGE; GUIDUGLI AND MILLER, JUDGES.

MILLER, JUDGE: Earl McFall brings this appeal from a December 29, 1997 order of the Jefferson Circuit Court. We affirm.

The facts are these: In March 1980, appellant was sentenced to twenty years' imprisonment upon the charge of first-degree burglary (Kentucky Revised Statute 511.020). Appellant subsequently filed numerous post-judgment motions to vacate pursuant to Rules of Criminal Procedure (RCr) 11.42 and for relief from judgment under Civil Rule (CR) 60.01 and 60.02. In 1997, appellant filed another motion pursuant to CR 60.01 and 60.02. The circuit court denied same on December 29, 1997. This appeal followed.

Appellant contends that the circuit court committed reversible error by denying his CR 60.01 and 60.02 motion. We disagree. A review of the record reveals that appellant's grounds for relief under the 1997 CR 60.01 and 60.02 motion are the same grounds asserted in an earlier 1993 CR 60.01 and 60.02 motion. Appellant's 1993 CR 60.01 and 60.02 motion was denied by the circuit court on October 1, 1993. We are of the opinion that issues previously decided via CR 60.01 and 60.02 motion cannot be relitigated in a subsequent CR 60.01 and 60.02 motion. In short, appellant cannot raise the same grounds in successive motions. Moreover, we note that the Supreme Court has held that "[t]he 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." Gross v. Commonwealth, Ky., 648 S.W.2d 853, 857 (1983). We, thus, affirm the circuit court's denial of appellant's CR 60.01 and 60.02 motion.

For the foregoing reasons, the order of the circuit court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Earl McFall, Pro Se
Eddyville, KY

BRIEF FOR APPELLEE:

A. B. Chandler III
Attorney General
and
Gregory C. Fuchs
Assistant Attorney General
Frankfort, KY