

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1999-CA-002017-MR

ELBERT PHILLIP LONG

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT  
HONORABLE GARLAND HOWARD, JUDGE  
ACTION NO. 76-CR-18196

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING  
\*\* \*\*

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

MILLER, JUDGE: Elbert Phillip Long brings this *pro se* appeal from an August 11, 1999, order of the Daviess Circuit Court. We affirm.

On May 3, 1977, appellant was convicted of murder (Kentucky Revised Statutes (KRS) 507.020) and criminal attempt to commit first-degree rape (KRS 506.010; KRS 510.040). He received a life sentence and was paroled in 1986. His parole was subsequently revoked, and he was again incarcerated in 1988. Some eight years later, appellant filed a motion under Ky. R. Civ. P. (CR) 60.02 and CR 60.03 to amend or correct his sentence.

The Daviess Circuit Court determined the motion to be untimely and denied same. An appeal ensued to the Court of Appeals and was affirmed in Action No. 1996-CA-003389-MR.

On May 6, 1999, appellant filed another motion under CR 60.02(e) and (f) and CR 60.03 to amend or correct his sentence. On June 3, 1999, the Daviess Circuit Court again denied the motion. On June 16, 1999, appellant filed a CR 59.05 motion to alter, amend, or vacate said order. On August 11, 1999, the circuit court denied same. This appeal follows.

Appellant contends the circuit court committed reversible error by denying his CR 60.02 and CR 60.03 motion, wherein, he attacked the validity of his sentence and subsequent parole revocation. Appellant was initially sentenced to life imprisonment in 1977, and his parole was revoked in 1988. It is well established that a motion under CR 60.02(e) and (f) or CR 60.03 must be filed within a reasonable time after final judgment. Ray v. Commonwealth, Ky. App., 633 S.W.2d 71 (1982), and Huffaker v. Twyford, Ky., 445 S.W.2d 124 (1969). Upon the whole, we are unable to conclude that the present CR 60.02 and CR 60.03 motion was brought within a reasonable time. As such, we are inclined to view appellant's CR 60.02 and CR 60.03 motion as time barred.

For the foregoing reasons, the order of the Daviess Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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