

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2000-CA-000654-MR

CURTIS DANSBY

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE GARY D. PAYNE, JUDGE  
ACTION NO. 97-CR-01112

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DYCHE, GUIDUGLI AND SCHRODER, JUDGES.

GUIDUGLI, JUDGE. Curtis Dansby ("Dansby") appeals from an order of the Fayette Circuit Court denying his motion for relief under CR 60.02. We affirm.

On October 7, 1997, Dansby was indicted by the Fayette County Grand Jury on one count each of first degree trafficking in a controlled substance, unlawful possession of marijuana, unlawful possession of alcohol for sale without a license, and first degree persistent felony offender ("PFO"). The matter proceeded to a jury trial on January 15, 1998, after which Dansby was found guilty on the underlying charges. Thereafter, Dansby pled guilty on the PFO charge. On February 19, 1998, he

received a 10 year sentence which was enhanced to 15 years . On August 6, 1999, his conviction was affirmed on direct appeal to this Court.

During the pendency of the direct appeal, Dansby instituted a series of collateral attacks on his conviction. In May, 1998, Dansby filed a motion seeking CR 60.02 relief. That motion was later voluntarily withdrawn. In September, 1998, he filed a pro se motion under RCr 11.42 alleging ineffective assistance of counsel at trial. He then received court-appointed counsel who, after examining the motion, opined that it was without merit and sought to withdraw as counsel. That motion was granted, and Dansby's RCr 11.42 motion was eventually denied on March 15, 1999.

Two days later, the Commonwealth filed a response to the RCr 11.42 motion.<sup>1</sup> Dansby then filed a motion seeking leave to withdraw the RCr 11.42 motion. On June 15, 1999, the trial court denied Dansby's motion, noting that the court had already ruled on the merits of the RCr 11.42 motion.

On November 22, 1999, Dansby again filed a motion pursuant to CR 60.02 attacking his judgment and sentence. On February 22, 2000 the trial court denied the motion concluding that Dansby had not raised any issues justifying relief under CR 60.02. This pro se appeal followed.

Dansby now raises two claims of error. He first argues that the trial court abused its discretion in failing to appoint

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<sup>1</sup>We assume that the Commonwealth was not aware of the March 15, 1999 order.

counsel or conduct a hearing on the CR 60.02 motion. Second, he argues that he was denied due process of law when the prior convictions forming the basis of the PFO charge were not properly verified. We have closely examined the record, the law, and the written arguments, and affirm the order on appeal for a number of reasons. First, and most important, Dansby has previously availed himself of a direct appeal, an aborted CR 60.02 motion, and a RCr 11.42 motion which was examined by the trial court and denied. It is well-established that the final disposition of a RCr 11.42 motion forecloses the defendant from raising any issues via CR 60.02 which could reasonably have been presented in a RCr 11.42 proceeding.<sup>2</sup> RCr 11.42(4) states, "[F]inal disposition of the [RCr 11.42] motion shall conclude all issues that could reasonably have been presented in the same proceeding." See also, Gross v. Commonwealth, Ky., 648 S.W.2d 853 (1983). Clearly, the collateral attack on the judgment could have been raised (and, in part, was raised) in the direct appeal and simultaneous RCr 11.42 motion.

Second, even if Dansby was acting in compliance with RCr 11.42 (4) and Gross, relief under CR 60.02 requires a ". . . reason of an extraordinary nature justifying relief." The trial court found that Dansby had presented no such proof, and Dansby has not overcome the strong presumption that this ruling was correct. City of Louisville v. Allen, Ky., 385 S.W.2d 179 (1964). Similarly, Dansby did not request either the

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<sup>2</sup>Dansby was forewarned of this fact in a letter from his appointed counsel dated January 4, 1999.

appointment of counsel or a hearing on his CR 60.02 motion, and as such cannot now complain that he received neither.

Lastly, Dansby maintains that his trial counsel and/or the trial court failed to investigate the underlying offenses which gave rise to the PFO charge and conviction. Again, this issue either was presented or should have been presented on direct appeal or via the aborted CR 60.02 motion or in his RCr 11.42 motion. Accordingly, we find no error on this issue.

For the foregoing reasons, we affirm the order of the Fayette Circuit Court denying Dansby's motion for relief under CR 60.02.

ALL CONCUR.

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