

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-000252-MR

ROBERT LEE MARTIN

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE GEOFFREY P. MORRIS, JUDGE
ACTION NO. 90-CR-001319

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: COMBS, HUDDLESTON, AND MILLER, JUDGES.

MILLER, JUDGE: Robert Lee Martin brings this pro se appeal from a denial of his Ky. R. Civ. P. (CR) 60.02 motion by the Jefferson Circuit Court. We affirm.

Appellant was found guilty by a Jefferson County jury of murder, and sentenced to sixty years' imprisonment. The conviction was affirmed on direct appeal by the Supreme Court in Appeal No. 92-SC-000100-MR. Thereafter, appellant filed a Ky. R. Crim. P. (RCr) 11.42 motion, which was denied by the circuit court. Appellant appealed the denial of his RCr 11.42 motion to this Court in Appeal No. 94-CA-002912-MR; that appeal was dismissed by order entered January 11, 1996. Appellant now files

a CR 60.02 motion to vacate sentence based upon ineffective assistance of counsel. The circuit court denied the motion, thus precipitating this appeal.

Appellant contends the circuit court committed error by denying his CR 60.02 motion. He asserts that trial counsel provided ineffective assistance by failing to act on his desire to enter into a plea agreement. In Gross v. Commonwealth, Ky., 648 S.W.2d 853, 857 (1983) it was held that:

[A] defendant is required to avail himself of RCr 11.42 while in custody under sentence or on probation, parole or conditional discharge, as to any ground of which he is aware, or should be aware, during the period when this remedy is available to him. Final disposition of that motion, or waiver of the opportunity to make it, shall conclude all issues that reasonably could have been presented in that proceeding. The 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.

From the foregoing, it is clear issues that could have reasonably been presented in a RCr 11.42 motion are precluded under CR 60.02. In the case at hand, we believe that appellant could have reasonably presented his ineffective assistance of counsel claim in a RCr 11.42 proceeding. As such, we cannot say that the circuit court abused its discretion in denying relief under CR 60.02. See Fortney v. Mahan, Ky., 302 S.W.2d 842 (1957).

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

ALL CONCUR.

BRIEFS FOR APPELLANT:

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