

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000781-MR

BUSTER CHANDLER

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JAMES E. KELLER, JUDGE
ACTION NO. 90-CR-00433

COMMONWEALTH OF KENTUCKY

APPELLEE

AND

NO. 2002-CA-001696-MR

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v. APPEAL FROM FAYETTE CIRCUIT COURT
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COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; DYCHE, AND KNOPF, JUDGES.

DYCHE, JUDGE. In 2002-CA-000781-MR, Buster Chandler appeals from an order of the Fayette Circuit Court entered on April 8, 2002, in which the trial court denied the following: Chandler's motion, pursuant to CR 60.02, to vacate his conviction; his motion to consolidate, supplement, and amend his previous CR 60.02 motion; his motion for appointment of counsel; his motion for findings of fact; his motion for a polygraph test; his petition for mandatory injunction pursuant to CR 65.01; motion to supplement his CR 60.02 motion pursuant to CR 15.04; and his motion for directed verdict. The trial court denied Chandler's CR 60.02 motion since it found, in its discretion, that Chandler's motion was untimely filed.

In 2002-CA-001696-MR, Chandler appeals from an order of the Fayette Circuit Court entered on July 29, 2002, in which the trial court denied Chandler's motion, pursuant to KRS 439.3402, for exemption from the violent offender statute, KRS 439.3401; Chandler's motion for appointment of counsel, pursuant to KRS 439.3402; and his motion for full evidentiary hearing, pursuant to KRS 439.3402.

In 2002-CA-000781-MR, Chandler argues that his CR 60.02 motion, which was his second one, was filed within a reasonable amount of time since he is uneducated and was not aware of his current legal arguments until 2001, approximately nine years after his conviction. He also argues, in general,

that the trial court erred when it denied his CR 60.02 motion because the Commonwealth of Kentucky lacked subject matter jurisdiction over the crime since he alleges he murdered the victim in Knoxville, Tennessee. Finding that the trial court did not abuse its discretion, this Court affirms the trial court's order.

In 2002-CA-001696-MR, Chandler argues that the trial court abused its discretion when it denied his motion for appointment of counsel and his motion for an evidentiary hearing since, pursuant to KRS 439.3402, the trial court was required to appoint counsel and to hold a hearing. Chandler further argues that the trial court also abused its discretion when it denied his motion to be exempt from the violent offender statute because the trial court lacked subject matter jurisdiction. Finding that the trial court did not abuse its discretion, we affirm.

FACTS

On March 25, 1990, Chandler killed his former girlfriend, Glenda Hudson. Chandler bit Hudson several times on the left arm and left cheek; shot her three times; and stabbed her in the head several times with a sharp, round object. While both Chandler and Hudson were from Knoxville, Tennessee, Chandler decided to kill Hudson in Lexington, Kentucky. After killing her, Chandler dumped her body behind a business on New

Circle Road in Lexington. Hudson's body was found, and, after a few days, the Lexington police connected Chandler to the crime. Chandler was eventually arrested in Nashville, Tennessee, and while awaiting extradition Chandler confessed to a Lexington police officer and to an assistant commonwealth's attorney that he had killed Hudson in Lexington. At trial, Chandler testified on his own behalf and, once more, confessed to killing Hudson in Lexington, Kentucky, but claimed that he did so under extreme emotional distress.

On April 25, 1991, after a jury trial in Fayette County, Kentucky, Chandler was convicted of murder. After his conviction, in a final judgment and sentence entered on June 4, 1991, the Fayette Circuit Court sentenced Chandler to life in prison. Chandler appealed his conviction to the Supreme Court of Kentucky, which affirmed his conviction. Since his conviction, Chandler has filed numerous post-conviction actions including at least two motions pursuant to RCr 11.42; at least one previous motion pursuant to CR 60.02; numerous state habeas corpus actions; and numerous petitions for writs of mandamus.

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In his subsequent CR 60.02 motion, Chandler raised a multitude of arguments attacking his conviction. His arguments fall into three categories: arguments that should have been addressed on direct appeal; arguments that allege ineffective

assistance of counsel that should have been addressed by RCr 11.42; and miscellaneous arguments.

In his motion, Chandler presented several issues that should have been addressed on direct appeal. He argued that he perjured himself at trial; thus, his conviction was unconstitutional. He argued that the prosecutor violated his due process rights when he allegedly commented on Chandler's parole eligibility. He argued that the Lexington police lacked probable cause to search Hudson's vehicle since he had sole control over it. He argued that the prosecution withheld exculpatory evidence, specifically, three letters that Chandler himself wrote in which he stated he killed Hudson in Tennessee. Chandler argued that his confession was involuntary because it did not meet the corpus delecti rule. Finally, Chandler insisted that his Fourth Amendment rights were violated because he was forced to give dental impressions.

Chandler also alleged instances of ineffective assistance of counsel, which should have been raised pursuant to RCr 11.42. He argued that his Sixth Amendment right to compulsory process was violated when his trial counsel refused to issue subpoenas for Lewis Combs, Mike Engles, and Ross Alderman. He insisted that his conviction was unconstitutional because his attorney failed to file a motion for a bill of particulars.

Chandler presented various miscellaneous arguments as well. In one, he argued that the trial court violated his equal protection rights when it failed to advise him not to perjure himself since it advised all other witnesses not to perjure themselves. But the majority of his arguments were variations on his argument that his conviction was unconstitutional and/or illegal because the Commonwealth lacked subject matter jurisdiction over the murder since he killed Hudson in Knoxville, Tennessee, not Lexington, Kentucky.

The trial court cited Gross v. Commonwealth, Ky., 648 S.W.2d 853, 858 (1983), in which the Supreme Court held that a criminal defendant must invoke CR 60.02 within a reasonable time. The Supreme Court noted that, according to CR 60.02, the trial court has the discretion to determine what a reasonable amount of time is. Id. The trial court found that Chandler had filed his subsequent CR 60.02 motion nine years after his conviction; determined that nine years was an unreasonable time, given the circumstances; and denied Chandler's CR 60.02 motion along with his other motions.

On appeal, Chandler relies heavily on Cain v. Cain, Ky. App., 777 S.W.2d 238 (1989). In Cain, this Court held that an ex-husband could use CR 60.02 to allege that his ex-wife had perpetrated fraud during the divorce proceeding ten years previously because, until the time of the filing of the CR 60.02

motion, the ex-husband had no reason to question the fact that he was the father of the couple's youngest child. However, Cain simply does not apply since Chandler failed to offer any newly discovered facts to the trial court. He simply repeated his assertions that the murder occurred in Tennessee. This is contradicted by his confession and by his trial testimony.

Chandler argues that the trial court abused its discretion and violated his due process rights when it denied his motion because he could not have raised his current legal arguments on direct appeal or by RCr 11.42. He insists that he could only raise his arguments by CR 60.02.

Chandler argues that the trial court abused its discretion when it denied his CR 60.02 motion since the Commonwealth failed to prove the "corpus delecti" that the victim was killed in Lexington, Kentucky; and that the Commonwealth failed to prove each and every element of murder beyond a reasonable doubt since he killed Hudson in Tennessee.

Chandler argues that the trial court abused its discretion when it failed to rule on his allegation of prosecutorial misconduct. Chandler cites Whitaker v. Commonwealth, Ky., 895 S.W.2d 953 (1995), and claims that the prosecutor violated his due process rights when he allegedly commented on Chandler's parole eligibility. Chandler argues that he could not have presented this issue on direct appeal or

by RCr 11.42 since the Supreme Court handed down its decision in Whitaker after he had appealed and after he had filed his first RCr 11.42 motion.

Chandler argues that the trial court abused its discretion when it denied his CR 60.02 motion because the trial court lacked subject matter jurisdiction over the crime. Chandler cites Duncan v. O'Nan, Ky., 451 S.W.2d 626 (1970), and argues that subject matter jurisdiction cannot be waived and it can be raised at any time. Chandler insists that since he killed Hudson in Tennessee, the trial court lacked jurisdiction.

In Brown v. Commonwealth, Ky., 932 S.W.2d 359, 362 (1996), the Supreme Court of Kentucky stated that actions pursuant to CR 60.02 are directed to the "sound discretion of the court and the exercise of that discretion will not be disturbed on appeal except for abuse." (Citation omitted.)

The Supreme Court of Kentucky addressed post-conviction relief in criminal cases in general and addressed CR 60.02 specifically in Gross v. Commonwealth, supra. The Supreme Court stated:

[T]he proper procedure for a defendant aggrieved by a judgment in a criminal case is to directly appeal that judgment, stating every ground of error which it is reasonable to expect that he or his counsel is aware of when the appeal is taken.

Next, we hold that a defendant is required

to avail himself of RCr 11.42 . . . 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.

Id. at 857.

CR 60.02 limits relief in these particulars:
1) The first three grounds specified in the rule [(a) mistake, inadvertence, surprise or excusable neglect, (b) newly discovered evidence, (c) perjury] are limited to application for relief "not more than one year after the judgment."
2) The additional specified grounds for relief are (a) fraud, (b) the judgment is void, vacated in another case, satisfied and released, or otherwise no longer equitable, or (c) other reasons of an "extraordinary nature" justifying relief. These grounds are specific and explicit. Claims alleging that convictions were obtained in violation of constitutionally protected rights do not fit any of these grounds except the last one, "any other reason of an extraordinary nature justifying relief."

Id.

The record reflects that Chandler has previously appealed his conviction to the Supreme Court. In addition, he has filed at least two RCr 11.42 motions; at least one prior CR 60.02 motion; numerous habeas actions; and numerous actions for mandamus. Chandler raised or should have raised the majority of

his current claims on direct appeal. The rest of his claims were raised or should have been raised by RCr 11.42.

However, even if CR 60.02 was the appropriate means to address his current legal arguments, the Supreme Court has held that CR 60.02 must be invoked within a reasonable amount of time, and it is within the trial court's sound discretion to determine what constitutes a reasonable amount of time. Gross v. Commonwealth, supra at 857.

Considering the nature of Chandler's claims, he was aware or should have been aware of them well before 2001. In fact, since shortly after Chandler was convicted, he has insisted via various post-conviction actions that he killed Hudson in Tennessee. For Chandler to wait nine years to present these claims was not reasonable, and the trial court acted well within its discretion when it denied Chandler's subsequent CR 60.02 motion as untimely. Thus, we affirm the trial court's denial of Chandler's motions.

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On July 22, 2002, Chandler filed with the trial court a motion, pursuant to KRS 439.3402, for exemption from the violent offender statute, KRS 439.3401; a motion, pursuant to KRS 439.3402, for appointment of counsel; a motion, pursuant to KRS 439.3402, for an evidentiary hearing; and a motion to proceed in forma pauperis. Chandler argued that the trial court

should exempt him from the violent offender statute because the trial court lacked subject matter jurisdiction over the crime since he killed the victim, Glenda Hudson, in Knoxville, Tennessee. The trial court granted Chandler's motion to proceed in forma pauperis but summarily denied the rest.

On appeal, Chandler argues that the trial court abused its discretion when it refused to hold a hearing regarding his motion for exemption from the violent offender statute because the trial court lacked subject matter jurisdiction over the murder since he killed Hudson in Tennessee. Chandler insists that, pursuant to KRS 439.3402, the trial court was required to appoint him counsel. Thus, Chandler argues, when it refused to appoint counsel, the trial court violated Chandler's Fourteenth Amendment due process rights. Chandler also insists that the trial court violated KRS 439.3402 when it refused to hold an evidentiary hearing. Furthermore, according to Chandler, the trial court abused its discretion when it failed to rule on the issue of subject matter jurisdiction because, according to Duncan v. O'Nan, supra, subject matter jurisdiction can be raised at any time. Finally, Chandler insists that the trial court refused to appoint him counsel because he is African-American.

KRS 439.3401, popularly known as the violent offender statute, applies to any criminal defendant who has been

convicted of or pled guilty to any capital offense, Class A felony, or Class B felony that involved the death or serious physical injury of the victim. The statute significantly extends the minimum period of time a criminal defendant must serve before being eligible for parole. KRS 439.3401. However, the statute does not apply to a criminal defendant who has been determined to be a victim of domestic violence as defined by KRS 533.060. KRS 439.3401(5). This is the only exemption to the violent offender statute.

According to KRS 439.3402, any violent offender convicted prior to July 14, 1992, may file a motion with the sentencing court to be exempt from the statute if the court determines that the offender was a victim of domestic violence as defined by KRS 533.060. Pursuant to KRS 439.3402, the offender may also request appointment of counsel and an evidentiary hearing.

Chandler filed a motion to be exempted from the violent offender statute as well as filing motions for an evidentiary hearing and for appointment of counsel. However, Chandler argued that he should be exempt from the statute based on his allegation that he killed the victim, Hudson, in Tennessee. This argument cannot be addressed by means of a motion filed pursuant to KRS 439.3402. The only argument that can be addressed in a motion pursuant to KRS 439.3402 is whether

the criminal defendant was a victim of domestic violence. Since Chandler failed to allege that he was a victim of domestic violence, the trial court did not abuse its discretion when it denied Chandler's motions. Thus, we affirm the Fayette Circuit Court's denial of Chandler's motions.

CONCLUSION

In 2002-CA-000781-MR, we affirm the Fayette Circuit Court's denial of Chandler's motion, pursuant to CR 60.02, to vacate his conviction; his motion to consolidate, supplement and amend his previous CR 60.02 motion to vacate his conviction; his motion for appointment of counsel; his motion for findings of fact; his motion for a polygraph test; his petition for mandatory injunction pursuant to CR 65.01; his motion to supplement his CR 60.02 motion pursuant to CR 15.04; and his motion for directed verdict. Furthermore, in 2002-CA-001696, we affirm the Fayette Circuit Court's denial of Chandler's motion, pursuant to KRS 439.3402, for exemption from the violent offender statute, KRS 439.3401; his motion, pursuant to KRS 439.3402, for appointment of counsel; and his motion, pursuant to KRS 439.3402, for an evidentiary hearing.

ALL CONCUR.

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