

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2003-CA-002172-MR

JACTA EST ALEA

APPELLANT

v. APPEAL FROM LYON CIRCUIT COURT  
HONORABLE BILL CUNNINGHAM, JUDGE  
ACTION NO. 03-CI-00113

GLEN E. HAEBERLIN,  
KENTUCKY STATE PENITENTIARY

APPELLEES

OPINION  
AFFIRMING

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BEFORE: BUCKINGHAM, JOHNSON, AND KNOPF, JUDGES.

BUCKINGHAM, JUDGE: Jacta Est Alea appeals from an order of the Lyon Circuit Court denying his motion for relief pursuant to CR<sup>1</sup> 60.02. We affirm.

Jacta Est Alea is an inmate at the Kentucky State Penitentiary in Lyon County, Kentucky. He is housed in the segregation unit. On May 29, 2003, he filed a Motion for Declaration of Rights in the Lyon Circuit Court claiming that his constitutional rights were being violated due to prison

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<sup>1</sup> Kentucky Rules of Civil Procedure.

conditions. On July 15, 2003, the court entered an order dismissing the motion. No appeal was taken.

On September 10, 2003, Jacta Est Alea filed a motion pursuant to CR 60.02 requesting relief from the prior dismissal order. In support of the motion, he stated that the court failed to direct the clerk to transmit copies of the order to the prison officials and to the county attorney as required by KRS<sup>2</sup> 454.405(3). On September 19, 2003, the court entered an order denying the motion. This appeal followed.

Jacta Est Alea alleges two errors in his appeal. First, he asserts that the judge failed to recuse himself in the declaration of rights action in accordance with KRS 26A.015(2)(a). Next, he alleges that the court failed to comply with KRS 454.405(3) by not directing the clerk to send the copies of the order of dismissal to the prison officials and the county attorney.

Concerning the issue of whether the trial judge should have recused himself from hearing the Motion for Declaration of Rights, we note that this issue was not raised in the CR 60.02 motion. Therefore, it is not properly before this court on appeal. See Regional Jail Authority v. Tackett, Ky., 770 S.W.2d 225, 228 (1989).

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<sup>2</sup> Kentucky Revised Statutes.

Furthermore, this is an issue that would have been available for our review on direct appeal from the dismissal order. However, because *Jacta Est Alea* did not file a direct appeal from the dismissal order, relief pursuant to CR 60.02 is not available. See *McQueen v. Commonwealth*, Ky., 948 S.W.2d 415 (1997), wherein the Kentucky Supreme Court stated that "CR 60.02 is not a separate avenue of appeal to be pursued in addition to other remedies, but is available only to raise issues which cannot be raised in other proceedings." Id. at 416.

Concerning the issue of the court's apparent failure to direct the clerk to send a copy of the dismissal order to the prison officials and the county attorney, we note that this is also an issue that would have been available for our review on direct appeal of the dismissal order. Again, because *Jacta Est Alea* did not file a direct appeal from the order, relief pursuant to CR 60.02 is not available. See *McQueen*, supra.

The order of the Lyon Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEES:

*Jacta Est Alea, Pro Se*  
Eddyville, Kentucky