

RENDERED: SEPTEMBER 3, 2004; 10:00 a.m.  
NOT TO BE PUBLISHED

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2003-CA-002028-MR

STEPHEN BROWN

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE ROGER L. CRITTENDEN, JUDGE  
ACTION NO. 03-CI-00121

JAMES B. MITCHELL

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, CHIEF JUDGE; BUCKINGHAM, JUDGE; AND MILLER,  
SENIOR JUDGE.<sup>1</sup>

COMBS, CHIEF JUDGE: Stephen Brown ("Brown") appeals *pro se* from  
an order of the Franklin Circuit Court dismissing his CR<sup>2</sup> 60.02  
motion requesting that his judgment of conviction and sentence

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<sup>1</sup> Senior Judge John D. Miller sitting as Special Judge by assignment of the  
Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and  
KRS 21.580.

<sup>2</sup> Kentucky Rules of Civil Procedure.

be set aside, vacated, or amended. Finding no error in the ruling of the trial court, we affirm.

Brown was an inmate housed at Northpoint Training Center in Boyle County when he was reported with an unauthorized absence from the institution on December 5, 2001. On December 11, 2001, Brown pleaded not guilty to possession of dangerous contraband. He pleaded guilty and received a penalty of forfeiture of ninety-days' good time credit for these December violations.

On January 16, 2002, Brown again was found guilty of possession of dangerous contraband and of an unauthorized absence from an institution. He appealed to the Warden, who concurred with the determination of the Adjustment Committee. On March 27, 2002, Brown filed a Petition for a Declaration of Rights in the Boyle Circuit Court, claiming that his rights to due process were violated as a result of the two disciplinary proceedings. The Boyle Circuit Court concluded that Brown was not entitled to relief and dismissed his petition on August 8, 2002. His notice of appeal followed.

On October 23, 2002, Brown filed a separate motion for a Petition for a Declaration of Rights in the Franklin Circuit Court pertaining to the same disciplinary matter, stating in his pleading that "the Petitioner has withdrawn this case from Boyle Circuit Court." (Emphasis added.) On January 30, 2003, Brown

filed yet another Petition for Declaration of Rights in the Franklin Circuit Court -- the third concerning the original subject matter originally considered and dismissed by the Boyle Circuit Court. On February 14, 2003, Warden Mitchell filed a motion to dismiss pursuant to CR 12.02(f) and CR 56.02.

On March 10, 2003, the Franklin Circuit Court dismissed Brown's complaint since it had been filed previously in the Boyle Circuit Court, carefully noting Brown's misrepresentation that he had withdrawn his complaint rather than acknowledging the fact that it had been dismissed. The court then assessed fines for his having filed a frivolous action without legal merit. On August 28, 2003, Brown filed a motion to modify, vacate and/or set aside judgment pursuant to CR 60.02(a)(e)(f), CR 12.08(3), and CR 12.02. On September 10, 2003, the Franklin Circuit Court denied Brown's motion. It is from this denial of Brown's motion that he filed a *pro se* appeal on September 24, 2003.

A CR 60.02 motion to vacate or set aside a prior judgment of conviction "is not intended merely as an additional opportunity to challenge conviction and judgment." Gross v. Commonwealth, 648 S.W.2d 853 (1983). This rule is available for the specialized purpose of raising issues that could not have been raised in other post-conviction relief proceedings. McQueen v. Commonwealth, 948 S.W.2d 415 (1997). The appellant

bears the burden of demonstrating "why he is entitled to this special, extraordinary relief from the judgment." Id. at 416. Brown has not established the necessary grounds for entitlement to CR 60.02 relief.

His primary contention is that the Franklin Circuit Court did not have proper jurisdiction to rule on the merits of alleged due process violations that occurred at the Northpoint Training Center in Boyle County during an Adjustment Committee meeting. In support of his argument, he relies on sections (a), (e), and (f) of CR 60.02 to modify, vacate, or set aside the judgment. He challenges the dismissal of the suit as having been frivolous and argues that his petition had legal merit.

Any alleged impropriety as to venue was waived when Brown himself elected to file his petition in the Franklin Circuit Court. As to his challenge to the court's jurisdiction, a court of the Commonwealth having general jurisdiction is permitted to review and decide on a Petition for Declaratory Judgment. Thus, the Franklin Circuit Court properly acted within its jurisdiction in ruling on the merits of alleged due process violations that occurred in Boyle County.

The Commonwealth correctly argues that a CR 60.02 motion to set aside a judgment of conviction must be made within a reasonable time after the judgment was rendered. Harris v. Commonwealth, Ky, 296 S.W.2d 700 (1956). Under the

circumstances of this case, we agree that six months following the judgment was not a reasonable time frame for Brown to wait before filing a CR 60.02 motion. There were no facts of which he could not have been aware to serve as a justification for the lapse of time that occurred between the judgment and his motion for allegedly improper jurisdiction.

Brown has not presented any new evidence, allegation, or fact to persuade this Court that he is entitled to special, extraordinary relief. His dissatisfaction with the outcome in the underlying action falls far short of meeting the extraordinary criteria that CR 60.02 requires.

Brown also contends that the court erroneously held that he filed a frivolous action without legal merit. However, he failed to raise this issue in the previous proceedings, and it is unpreserved for our review. Were we to review it on its merits, we would conclude that the circuit court was correct in its assessment that the action was indeed frivolous.

We affirm the order of the Franklin Circuit Court denying Brown's motion for CR 60.02 relief.

ALL CONCUR.

BRIEF FOR APPELLANT:

Stephen Brown, *pro se*  
Green River Correctional  
Complex  
Central City, Kentucky

BRIEF FOR APPELLEE:

Valerie Marshall  
Justice and Public Safety  
Cabinet  
Frankfort, Kentucky