

RENDERED: FEBRUARY 10, 2006; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000610-MR

TODERICK L. MOORE-BAKER

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE GEOFFREY P. MORRIS, JUDGE
ACTION NO. 92-CR-001927

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: TACKETT, TAYLOR, AND VANMETER, JUDGES.

TAYLOR, JUDGE: Toderick L. Moore-Baker brings this *pro se* appeal from a February 7, 2005, order of the Jefferson Circuit Court denying his Ky. R. Civ. P. (CR) 60.02 motion. We affirm.

In June 1993, appellant entered a guilty plea to three counts of murder, one count of kidnapping, one count of criminal facilitation to commit robbery in the first degree, and one

count of receiving stolen property over \$100.00.¹ He was sentenced to life in prison without parole for twenty-five years. Thereafter, appellant filed a motion to vacate sentence pursuant to Ky. R. Crim. P. (RCr) 11.42 and CR 60.02. By order entered June 17, 1997, the circuit court denied appellant's motion. The Court of Appeals affirmed the circuit court's denial in Appeal No. 1997-CA-001691-MR. In February 2005, appellant filed another CR 60.02 motion. That motion was denied by the circuit court on February 7, 2005, thus precipitating this appeal.

Appellant brings four allegations of error on appeal. In his first and third allegations of error, appellant basically contends that his guilty plea was not entered knowingly and intelligently. In the fourth allegation, appellant asserts he was denied effective assistance of counsel because trial counsel erroneously advised him to plead guilty. In McQueen v. Commonwealth, 948 S.W.2d 415, 416 (Ky. 1997) the court held:

A defendant who is in custody under sentence or on probation, parole or conditional discharge, 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 the remedy is available to him. Civil Rule 60.02 is not intended merely as an additional opportunity to relitigate the same issues which could "reasonably have

¹ Appellant was actually indicted for three counts of capital murder under Kentucky Revised Statutes 507.020. Appellant entered into a plea agreement to avoid the possibility of receiving the death penalty.

been presented" by direct appeal or RCr 11.42 proceedings.

We believe allegations one, three, and four should have been presented in an RCr 11.42 motion. Simply put, CR 60.02 is not the proper vehicle to raise allegations concerning the voluntariness of a guilty plea or the ineffectiveness of trial counsel. As such, we decline to review these issues in this appeal.

In appellant's second allegation of error, he alleges the indictment was deficient because "it did not state the facts which would inform him of the specific offense with which he was charged" Appellant alleges that he was indicted for intentional and wanton murder. He claims that intentional and wanton murder are two different offenses; thus, the indictment violated "double jeopardy." As such, he believes the indictment to be defective.

It is well-established that entry of a guilty plea waives all defenses except that the indictment does not charge a crime. Corbett v. Commonwealth, 717 S.W.2d 831 (Ky. 1986). In reviewing the indictment, we are of the opinion that it adequately charges appellant with the crime of murder. We reject any other alleged deficiencies in the indictment as waived by entry of the guilty plea. Accordingly, we hold that

the circuit court did not commit error by denying appellant's CR 60.02 motion to set aside his judgment.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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