

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000881-MR

LEON R. NOLAND

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE GARY D PAYNE, JUDGE
ACTION NO. 87-CR-00590

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: COMBS, CHIEF JUDGE; DIXON, JUDGE; KNOPF,¹ SENIOR JUDGE.

KNOPF, SENIOR JUDGE: Leon R. Noland appeals the November 2, 2005, order of the Fayette Circuit Court, denying several motions made pursuant to CR² 60.02. We affirm.

On January 16, 1987, Delores Stites was returning to her car when she was kidnapped by two individuals. At some time during her abduction, Stites' hands were tied behind her back, her ankles were bound, she was gagged, her mouth was taped and she was placed into the trunk of her vehicle. She was eventually removed

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

² Kentucky Rules of Civil Procedure.

from the trunk of the car and placed into a dumpster, from which she was able to escape and seek help. Stites' car and purse were stolen by her assailants. Several unauthorized charges were made on her stolen credit card and cash was withdrawn from her bank account using her stolen ATM card.

On March 17, 1987, Noland was arrested in California after he was caught driving Stites' stolen vehicle. The vehicle had been outfitted with license plates that had been stolen from another vehicle. Noland told police that he knew the car had been stolen, that he had not participated in its theft and that it had been given to him by Gwendolyn Carter.

On July 17, 1987, Carter was sentenced to five years for a first-degree robbery charge which had been amended to complicity to commit second-degree robbery. A charge of kidnapping was dismissed and she received shock probation on October 16, 1987, for a period of five years. On January 26, 1988,³ Noland was found guilty of kidnapping and second-degree robbery. On February 19, 1988, Noland was sentenced to twenty years for the kidnapping charge and ten years on the robbery charge, to run consecutively.

After his sentence, and for the next seventeen years, Noland filed various motions and appeals to his case. On October 19, 2005, Noland filed a motion pursuant to CR 60.02 and made the following allegations: 1) the trial court failed to instruct the jury on receiving stolen property; 2) ineffective assistance of counsel, by way of his appellate counsel's failure to raise the first allegation on a prior appeal;⁴ and 3) the trial

³ It is unclear to the Court whether Noland's jury trial was on January 26, 1988, or January 28, 1988. For purposes of this appeal, the exact date is irrelevant.

⁴ The appeal to which Noland references was filed February 25, 1988.

court failed to define petit larceny for the jury. Noland later supplemented his claim alleging that the prosecutor improperly referenced Carter's conviction. Noland's motion was denied on November 2, 2005, when the trial court found "[m]ovant has filed several motions pursuant to CR 60.02, the present motion does not raise issues that have not previously been ruled on or that would be a basis to grant the relief sought."⁵ Noland filed a motion to reconsider and this appeal followed.

"The standard of review of an appeal involving a CR 60.02 motion is whether the trial court abused its discretion." *White v. Commonwealth*, 32 S.W.3d 83, 86 (Ky.App. 2000) (citing *Brown v. Commonwealth*, 932 S.W.2d 359, 361 (Ky. 1996)). The trial court's decision will not be disturbed absent a finding of "flagrant miscarriage of justice." *Gross v. Commonwealth*, 648 S.W.2d 853, 858 (Ky. 1983).

CR 60.02 reads:

On motion a court may, upon such terms as are just, relieve a party or his legal representative from its final judgment, order, or proceeding upon the following grounds: (a) mistake, inadvertence, surprise or excusable neglect; (b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59.02; (c) perjury or falsified evidence; (d) fraud affecting the proceedings, other than perjury or falsified evidence; (e) the judgment is void, or has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (f) any other reason of an extraordinary nature justifying relief. *The motion shall be made within a reasonable time*, and on grounds (a), (b), and (c) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this rule does not affect the finality of a judgment or suspend its operation.

⁵ This quotation of the November 2, 2005, order overruling Noland's motion was taken from appellee's brief. Due to Noland's failure to provide the Court with a copy of said order, this language is accepted by the court as legitimate.

(Emphasis added). Noland’s motion was filed seventeen years after his conviction. We do not believe this to be “within a reasonable time”, as required by CR 60.02. Noland has failed to present us with any reason why he should be given an exception to the requirement of reasonable time and has further failed to prove a flagrant miscarriage of justice by the trial court. We additionally note that some of the alleged errors were previously raised in prior motions before the trial court.

For the foregoing reasons, the November 2, 2005, order of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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