RENDERED: MAY 9, 2008; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000298-MR

JOSEPH HANCOCK — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JAMES M. SHAKE, JUDGE
ACTION NO. 05-CR-002757

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: KELLER, TAYLOR, AND VANMETER, JUDGES.

VANMETER, JUDGE: Joseph Hancock appeals from the Jefferson Circuit Court's denial of his CR[1] 60.02 motion. Finding no error, we affirm.

In February 2006, Hancock entered a guilty plea to one count of Robbery in the First Degree and received a sentence of ten years. Another robbery count was dismissed, and the ten-year sentence was to be served concurrently with a five-year sentence on another indictment. In November 2006, Hancock filed a CR 60.02 motion to vacate the sentence. The basis for the motion was Hancock's allegation that the

[1] Kentucky Rules of Civil Procedure.

search that led to incriminating evidence against him was illegal in that it occurred prior to the return of the search warrant.

Unfortunately for Hancock, "the entry of a valid guilty plea effectively waives all defenses other than that the indictment charged no offense." *Thompson v. Commonwealth*, 147 S.W.3d 22, 39 (Ky. 2004) (citing *Quarles v. Commonwealth*, 456 S.W.2d 693, 694 (Ky. 1970)). Once a guilty plea is entered, the defendant may not raise independent claims of violations of constitutional rights. *Thompson*, 147 S.W.3d at 39.

In this case, Hancock chose to pursue a CR 60.02 claim. However, "CR 60.02 is not intended merely as an additional opportunity to raise *Boykin*[2] defenses. It is for relief that is not available by direct appeal and not available under RCr[3] 11.42. The movant must demonstrate why he is entitled to this special, extraordinary relief." *Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983). Like *coram nobis*, the purpose of CR 60.02 is to correct errors upon a showing of "facts or grounds, not appearing on the face of the record and not available by appeal or otherwise, which were discovered after the rendition of the judgment without fault of the party seeking relief." *Harris v. Commonwealth*, 296 S.W.2d 700, 701 (Ky. 1956); *see also McQueen v. Commonwealth*, 948 S.W.2d 415, 416 (Ky. 1997) (purpose of CR 60.02 is to bring forward "errors in matter of fact which . . . were unknown and could not have been known to the party by the exercise of reasonable diligence and in time to have been otherwise presented to the court"). Further, "[a] criminal judgment may be set aside only in extraordinary and emergency cases where the showing made is of such a conclusive character as to indicate the verdict most probably would not have been

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[2] *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

[3] Kentucky Rules of Criminal Procedure.

rendered and there is a strong probability of a miscarriage of justice." *Harris*, 296 S.W.2d at 702.

In this case, Hancock's motion was supported by the October 2006 affidavits of Hancock's roommate and neighbors concerning the timing of the execution of the search warrant. Hancock, who was represented by counsel at all stages of the proceeding prior to and including sentencing, makes no showing that this information could not have been discovered earlier by the exercise of due diligence and brought to the attention of the trial court by a suppression motion. *See Harris*, 296 S.W.2d at 702. Furthermore, given the other overwhelming evidence against Hancock, *i.e.*, the video surveillance tapes which showed him in the act with his car in the background, and the witnesses' identification of him, including that of his roommate when the police came to their apartment, Hancock makes no showing that even absent the evidence seized in the search of the apartment, "the verdict most probably would not have been rendered and there is a strong probability of a miscarriage of justice." *Id.* at 702.

The Jefferson Circuit Court's judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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