

RENDERED: JUNE 27, 2008; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-001098-MR

STEVEN RAY COMBS, JR.

APPELLANT

v. APPEAL FROM BELL CIRCUIT COURT
HONORABLE JAMES L. BOWLING, JR., JUDGE
ACTION NO. 02-CR-00159

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE AND STUMBO, JUDGES; GRAVES,¹ SENIOR JUDGE.

¹ Senior Judge John W. Graves sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

ACREE, JUDGE: Steven Ray Combs, Jr., appeals *pro se* from an order of the Bell Circuit Court which denied his motion to vacate his sentence and judgment pursuant to Kentucky Rules of Civil Procedure (CR) 60.02(e) and (f). Because the motion is procedurally barred we affirm.

Combs was indicted by the Bell County Grand Jury on November 7, 2002, on one count of sodomy in the first degree with a child under the age of twelve and one count of sexual abuse in the first degree with a child under the age of twelve. On October 17, 2003, Combs entered a guilty plea to both counts.

At his December 1, 2003, sentencing hearing, Combs *pro se* moved to withdraw his guilty plea on the grounds that he was coerced by the police and his attorney to plead guilty. Combs cited no facts in support of his motion and stated only that he felt pressured by the police and his attorney to take the plea. The trial court determined that under the totality of the circumstances, Combs' plea was voluntarily entered.² Following this, Combs was sentenced to 15 years in the penitentiary. Combs did not file a direct appeal, nor did he move the trial court pursuant to Kentucky Rules of Criminal Procedure (RCr) 11.42.

On April 16, 2007, Combs filed a CR 60.02 motion to vacate his judgment arguing the trial court erred in not allowing him to withdraw his guilty plea. Finding his motion to be without merit, the Bell Circuit court denied it. This appeal followed.

² This conclusion is supported by the record which reveals that at the time of the plea, the trial court conducted a hearing in compliance with *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). Combs acknowledged that he understood the charges, had conferred with counsel, and was not forced or coerced into entering his plea.

Combs contends that the trial court abused its discretion by failing to grant him relief from his 2003 sentence. Because he has failed to assert his claim in a timely fashion, we are barred from reviewing it at this stage.

In *Gross v. Commonwealth*, 648 S.W.2d 853 (Ky. 1983), the Supreme Court of Kentucky prescribed a detailed procedure to govern post-conviction proceedings. The Court held that a criminal defendant must first bring a direct appeal when available and then invoke the provisions of RCr 11.42 by addressing every error of which he was (or should have been) aware. The Court emphasized that the provisions of CR 60.02 apply only to extraordinary situations not otherwise subject to relief through direct appeal or RCr 11.42 proceedings. CR 60.02 is not intended merely as an additional opportunity to relitigate the same issues that could “reasonably have been presented” by direct appeal or through RCr 11.42 proceedings. *McQueen v. Commonwealth*, 948 S.W.2d 415, 416 (Ky. 1997).

Under RCr 11.42, Combs was afforded three years from the date of entry of the final judgment on December 1, 2003, to raise his claim that he should have been allowed to withdraw his guilty plea because it was coerced. He has provided absolutely no explanation as to why he failed to raise his claims during that period. The issue was apparent at the time the judgment was entered against him. Consequently, he is not allowed to raise that issue now in a CR 60.02 motion.

Additionally, Combs failed to exercise due diligence in pursuing his claim. Under the provisions of CR 60.02, a motion must be filed within a

reasonable time if the motion is based upon an extraordinary reason justifying the relief sought. Combs waited until April 2007 to file this motion with the trial court. A delay of more than three and a half years is not reasonable under these circumstances and does not comply with the requirements of CR 60.02. Since Combs has failed to invoke the provisions of CR 60.02 in a timely and proper manner, this action is barred on procedural grounds.

The order of the Bell Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Steven Ray Combs, Jr., *pro se*
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BRIEF FOR APPELLEE:

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