

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-001465-MR

DECOURSEY BANKS

APPELLANT

v. APPEAL FROM MONTGOMERY CIRCUIT COURT
HONORABLE BETH LEWIS MAZE, JUDGE
ACTION NO. 01-CR-00180

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: LAMBERT, MOORE, AND WINE, JUDGES.

WINE, JUDGE: On December 14, 2001, a Montgomery County grand jury indicted Decoursey Banks on one count of first-degree sodomy involving a child less than twelve years of age. Following a jury trial, Banks was convicted and sentenced to twenty years' imprisonment. The Kentucky Supreme Court affirmed his conviction in an unpublished opinion. *Banks v. Commonwealth*, 2003-SC-0064-MR (June 17, 2004).

Thereafter, on June 20, 2007, Banks filed a motion to vacate, correct, or set aside his conviction pursuant to Kentucky Rules of Civil Procedure (“CR”) 60.02(e) and (f). The trial court denied the motion because the issues raised by Banks could and should have been raised on direct appeal. Banks requested and was granted the appointment of counsel on this appeal but the Department of Public Advocacy declined to represent him, stating that the appeal was not a proceeding that a reasonable person with adequate means would be willing to bring at his own expense. *Anders v. California*, 386 U.S. 738, 744, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967). Kentucky Revised Statutes (“KRS”) 31.110(2)(c). This *pro se* appeal followed.

It is well-established that CR 60.02 is for relief that is not available by direct appeal and not available collaterally under RCr 11.42. *Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983). CR 60.02 is not intended to afford individuals an additional opportunity to relitigate issues that have already been presented in an earlier direct appeal or collateral attack or present new issues that could have been raised in those proceedings. *McQueen v. Commonwealth*, 948 S.W.2d 415, 416 (Ky. 1997); RCr 11.42(3). And CR 60.02 should only be used to provide relief when the movant demonstrates why he or she is entitled to the special, extraordinary relief provided by the rule. *Gross*, 648 S.W.2d at 856. Finally, claims under CR 60.02(e) and (f) must be raised within a reasonable time.

Banks has met none of the requirements for raising these issues under CR 60.02. Banks contends that the evidence was insufficient to support his

conviction. However, the Kentucky Supreme Court rejected this argument on direct appeal, concluding that the Commonwealth had presented sufficient evidence to withstand a motion for directed verdict. Likewise, the Supreme Court found that Banks's confession was properly admitted. While Banks presents different grounds for relief on these issues than before, he makes no attempt to explain why he could not have presented these arguments on direct appeal. Therefore, the trial court did not abuse its discretion in denying his CR 60.02 motion and we affirm the Montgomery Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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