

RENDERED: SEPTEMBER 4, 2009; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-002191-MR

LARRY E. WATKINS

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE MITCHELL PERRY, JUDGE
ACTION NO. 07-CR-002574

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CLAYTON, MOORE, AND VANMETER, JUDGES.

VANMETER, JUDGE: Larry E. Watkins appeals *pro se* from an order entered by the Jefferson Circuit Court denying his motion to vacate an earlier order. We affirm.

Based on events which occurred in April 2007, Watkins was charged with first-degree burglary, first-degree wanton endangerment, illegal use or possession of drug paraphernalia, and public intoxication. In May 2008, pursuant

to the Commonwealth's recommendation and *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970), Watkins entered a guilty plea to a single charge of public intoxication. The trial court accepted the plea and, in accordance with the Commonwealth's recommendation, sentenced Watkins to a \$25 fine, converted to credit for time served.

Meanwhile, Watkins evidently was serving time on unrelated charges. In June 2008 Watkins tendered to the trial court a *pro se* "Motion to Vacate and Modification," asserting that he was not guilty of any of the charges against him, including public intoxication. The trial court denied the motion, finding that Watkins had cited no legal authority compelling the modification of its judgment dismissing three of the charges against him. As to the remaining public intoxication charge, the court found that the record showed Watkins had knowingly and intelligently entered into the plea agreement, and that he had provided no legal or factual support for his present allegations. Further, the court found Watkins was not entitled to relief since his sentence was limited to a fine, as to which he had been given credit for time already served. This appeal followed.

Watkins' motion to vacate necessarily was filed pursuant to either RCr¹ 11.42, or CR² 60.02. However, RCr 11.42 was not a proper vehicle for attacking the judgment, since Watkins' guilty plea to public intoxication did not

¹ Kentucky Rules of Criminal Procedure.

² Kentucky Rules of Civil Procedure.

result in detention, probation, parole, or conditional discharge. RCr 11.42(1). *See Lewallen v. Commonwealth*, 584 S.W.2d 748 (Ky.App. 1979).

Moreover, Watkins was not entitled to relief pursuant to CR 60.02, as that rule permits relief only in the event of

(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.

On their face, Watkins' allegations do not fall within CR 60.02 (a), (c), (d), or (e).

Further, although Watkins attempts to rely on certain evidence not produced below, nothing in his motion or the circumstances below suggests that such evidence was unavailable at the time of his guilty plea so as to fall within subsection (b). Finally, Watkins has presented nothing to suggest the existence of extraordinary grounds for relief for purposes of invoking subsection (f). It follows, therefore, that the trial court did not err by finding that no grounds existed for granting Watkins the requested relief.

The Jefferson Circuit Court's order is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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