RENDERED: OCTOBER 9, 2009; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-001751-MR

ROGER VANHOOSE — APPELLANT

v.

APPEAL FROM SHELBY CIRCUIT COURT
HONORABLE CHARLES R. HICKMAN, JUDGE
ACTION NO. 70-CR-05038 AND 70-CR-05042

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: MOORE AND NICKELL, JUDGES; HARRIS,[1] SENIOR JUDGE.

MOORE, JUDGE: Roger Vanhoose appeals the Shelby Circuit Court's order denying his motion to vacate and set aside the judgment against him that was brought pursuant to CR[2] 60.02, CR 60.03, Section Fourteen of the Kentucky

[1] Senior Judge William R. Harris, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

[2] Kentucky Rule of Civil Procedure.

Constitution, and RCr[3] 11.42. After a careful review of the record, we affirm because all of Vanhoose's claims are barred by the doctrine of res judicata.

In 1970, Vanhoose pleaded guilty to charges of armed robbery and rape. He received two life sentences for his crimes. Since that time, he has been paroled twice.

Vanhoose has previously filed two RCr 11.42 motions that were denied. He filed a CR 60.02 motion in 1999, and while that motion was pending, a risk assessment hearing was scheduled for Vanhoose pursuant to new legislation that Kentucky had enacted requiring sex offenders to be assessed prior to being released on parole. Vanhoose filed a "motion to remand" in which he asked the circuit court to remove his risk assessment hearing from its docket on the basis that the statute requiring such hearings was inapplicable to him. Specifically, Vanhoose argued that the statute was inapplicable because it did not state that it was to be retroactively applied and because application of the statute to his case would be a violation of the Ex Post Facto Clauses of the Kentucky and United States Constitutions.

Nevertheless, in 2000, Vanhoose's assessment hearing was held. The circuit court determined that he was a high risk sex offender. He appealed from that determination, challenging the constitutionality of the sex offender assessment statutes. This Court held the matter in abeyance pending the Kentucky Supreme Court's decision in *Hyatt v. Commonwealth*, 72 S.W.3d 566 (Ky. 2002). After the

[3] Kentucky Rule of Criminal Procedure.

Hyatt decision was entered, this Court ordered Vanhoose to show cause why the judgment he appealed from should not be affirmed pursuant to *Hyatt*. Vanhoose did not respond to the show cause order. Accordingly, this Court affirmed the circuit court's judgment. Vanhoose moved for discretionary review in the Kentucky Supreme Court, but the Court denied his motion.

Vanhoose then filed the motion at issue in this case in the circuit court under CR 60.02, CR 60.03, RCr 11.42, and Section Fourteen of the Kentucky Constitution.

The circuit court denied Vanhoose's motion, finding that Vanhoose had raised the same claims in the circuit court in 2000 and that the court had denied relief based on those claims. Additionally, the court noted that this Court and the Kentucky Supreme Court had denied Vanhoose relief based on those claims.

Vanhoose now appeals, raising the same claims that he asserted in the circuit court under CR 60.02, CR 60.03, RCr 11.42, and Section Fourteen of the Kentucky Constitution. Thus, he asserts that his high risk sex offender assessment violates the Ex Post Facto Clause of the United States Constitution and renders the judgment against him void because it is no longer equitable, and he should, therefore, be permitted to withdraw his guilty plea. Vanhoose also contends that a risk assessment evaluation was never completed before the circuit court determined that he was a high risk sex offender and, thus, that the circuit court's findings were based on "judicial fraud." He alleges that, as applied to him, the

provisions of the sex offender assessment laws are unconstitutional because they constitute a bill of attainder. Finally, Vanhoose contends that the current criminal code should not have been applied to his case because he was convicted prior to January 1, 1975 and, thus, as an equitable solution, he should be resentenced to a maximum term of forty years of imprisonment. We find that all of his claims are barred by the doctrine of res judicata.

"Res judicata is a doctrine that bars subsequent suits between the same parties and their privies on a cause of action that was previously decided upon its merits." *Buis v. Elliott*, 142 S.W.3d 137, 139 (Ky. 2004).

> Res judicata is generally thought of as consisting of two subparts. Claim preclusion bars a party from re-litigating a previously adjudicated cause of action and entirely bars a new lawsuit on the same cause of action. . . . Issue preclusion, also known as collateral estoppel, bars a party from re-litigating any issue actually litigated and finally decided in an earlier action.

Id. at 140 (internal quotation marks omitted).

All of Vanhoose's claims were either raised in his prior "motion for remand" that was brought in the circuit court and was adjudicated on appeal, or they could have been brought in that prior motion and appeal. Therefore, his present claims are barred by the doctrine of res judicata.

Accordingly, the order of the Shelby Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Roger Vanhoose
Pro se
Burgin, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General

Hays Lawson
Assistant Attorney General
Frankfort, Kentucky