

RENDERED DECEMBER 18, 2009; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2009-CA-000920-MR

CHESTER R. DUNCAN

APPELLANT

v. APPEAL FROM BELL CIRCUIT COURT  
HONORABLE JAMES L. BOWLING, JR., JUDGE  
ACTION NO. 90-CR-00087

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CLAYTON, DIXON, AND THOMPSON, JUDGES.

CLAYTON, JUDGE: This is an appeal from a decision of the Bell Circuit Court denying appellant, Chester Duncan's, motion for relief pursuant to Kentucky Rules of Civil Procedure (CR) 60.02. Based upon the following, we will affirm the decision of the trial court.

## OPINION

Duncan was convicted of sodomy in the first degree and two counts of sexual abuse in the first degree in 1991. He filed a direct appeal and the Kentucky Supreme Court affirmed the decision of the jury. Duncan then began a series of collateral attacks on the judgment. First, he filed a Kentucky Rules of Criminal Procedure (RCr) 11.42 motion. The trial court denied this motion after an evidentiary hearing. Duncan appealed the trial court's decision to our Court, which affirmed the trial court.

Duncan thereafter filed a CR 60.02 motion in October of 1998. The trial court denied this motion as well and our Court, once again, affirmed the trial court's decision. Then, in June of 2005, Duncan filed a motion for correction of errors pursuant to RCr 10.26 and CR 61.02. The trial court also denied these motions and our Court affirmed the trial court's decision.

In February of 2009, Duncan filed another motion which was essentially the same motion he had filed in October of 2008. While the trial court denied this motion as well, Duncan did not appeal this decision. Finally, in March of 2009, Duncan filed the motion for relief pursuant to CR 60.02 the denial of which is the subject of this appeal. The trial court found that the latest CR 60.02 motion was untimely and denied it. We are of the opinion that the trial court was correct.

The trial court did not address the substantive issues raised in Duncan's appeal, but held that a CR 60.02 motion eighteen years after his

conviction was too late. While CR 60.02 provides that “[t]he motion shall be made within a reasonable time . . .”, we agree with the trial court that eighteen years after the conviction as well as after numerous motions for relief which have been denied on the merits, is simply too late.

We therefore affirm the decision of the trial court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Chester Duncan, *pro se*  
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BRIEF FOR APPELLEE:

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