

RENDERED: AUGUST 6, 2010; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-000449-MR

LESLIE SMITH

APPELLANT

v. APPEAL FROM HANCOCK CIRCUIT COURT
HONORABLE RONNIE C. DORTCH, JUDGE
ACTION NO. 80-CR-00035

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, DIXON AND STUMBO, JUDGES.

STUMBO, JUDGE: Leslie Smith appeals from the denial of his Civil Rule (CR) 60.02(f) motion seeking relief from a criminal conviction. We find the motion was properly denied and affirm.

On July 29, 1981, Smith was sentenced to fifty years in prison pursuant to a guilty plea. Over the next 25 years, Smith filed four motions for

post-conviction relief, two of which were appealed to previous panels of this Court. In each instance, his conviction was affirmed. On January 9, 2009, Smith filed a CR 60.02(f) motion seeking to overturn his conviction. That motion was denied and this appeal followed.

CR 60.02 states that “[o]n motion a court may, upon such terms as are just, relieve a party or his legal representative from its final judgment, order, or proceeding upon the following grounds: . . . (f) any other reason of an extraordinary nature justifying relief. The motion shall be made within a reasonable time” A motion brought pursuant to CR 60.02

is for relief that is not available by direct appeal and not available under RCr 11.42. The movant must demonstrate why he is entitled to this special, extraordinary relief. Before the movant is entitled to an evidentiary hearing, he must affirmatively allege facts which, if true, justify vacating the judgment and further allege special circumstances that justify CR 60.02 relief.

Gross v. Commonwealth, 648 S.W.2d 853, 856 (Ky. 1983).

Here, all of Smith’s arguments as to why his conviction should be overturned have been brought or should have been brought during previous post-conviction motions or on direct appeal; therefore, the relief requested pursuant to CR 60.02 was properly denied. *McQueen v. Commonwealth*, 948 S.W.2d 415, 416 (Ky. 1997); *Gross, supra*. Additionally, Smith waited almost 28 years before bringing this motion. As CR 60.02 states, the motion must be brought within a reasonable time. Twenty-eight years is not a reasonable time in this case.

We affirm the order overruling Smith’s CR 60.02 motion.

ALL CONCUR.

BRIEF FOR APPELLANT:

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