

RENDERED: AUGUST 13, 2010; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-000921-MR

GREGORY W. CHIPMAN

APPELLANT

v.

APPEAL FROM GRANT CIRCUIT COURT
HONORABLE STEPHEN L. BATES, JUDGE
ACTION NO. 99-CR-00079

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: TAYLOR, CHIEF JUDGE; COMBS AND NICKELL, JUDGES.

COMBS, JUDGE: Gregory Chipman appeals from an order of the Grant Circuit Court denying his motion filed pursuant to Kentucky Rule(s) of Civil Procedure (CR) 60.02. After our review, we affirm.

Chipman was convicted of murdering his uncle in 2000 and received a life sentence. Since that time, he has filed numerous motions and appeals, including a previous CR 60.02 motion on April 25, 2006, which was denied.

CR 60.02 provides relief based on “claims of error that ‘were unknown and could not have been known to the moving party by exercise of reasonable diligence and in time to have been otherwise presented to the court.’” *Barnett v. Commonwealth*, 979 S.W.2d 98, 101 (Ky. 1998) (quoting *Young v. Edward Tech. Group, Inc.*, 918 S.W.2d 229, 231 (Ky. App. 1995)).

Chipman claims that the trial court erred by not including jury instructions regarding the defenses of extreme emotional distress and alcohol intoxication. However, these are not “unknown issues” within the meaning of CR 60.02. In 2004, this Court heard the **identical** claims in the appeal that Chipman previously filed challenging the trial court’s denial of his CR 11.42 motion.

The predecessor of our Supreme Court analyzed the filing of a CR 60.02 motion that was premised upon the very same claims previously asserted in a CR 11.42 motion. It succinctly characterized such conduct as “trifling with the court.” *Burton v. Tartar*, 385 S.W.2d 168, 169 (Ky. 1964).

We agree that both substantively and procedurally, the motion filed in the Grant Circuit Court was frivolous and that we can grant no relief on appeal.

Therefore, we affirm the ruling of the Grant Circuit Court.

ALL CONCUR.

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