

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-001745-MR

STEPHANIE GRIFFITH

APPELLANT

v. APPEAL FROM CARTER CIRCUIT COURT
HONORABLE REBECCA K. PHILLIPS, JUDGE
ACTION NO. 04-CR-00076

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

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

NICKELL, JUDGE: Stephanie Griffith, *pro se*, has appealed from the Carter Circuit Court's denial of her CR¹ 60.02 motion for post-judgment relief. We affirm.

¹ Kentucky Rules of Civil Procedure.

Griffith was indicted on two counts of complicity² to commit murder³ and one count of burglary in the first degree⁴ in connection with the shooting deaths of Gary and Cheryl Young. According to the record, on or about January 14, 2004, Griffith aided or counseled her boyfriend, Andrew Young, to enter or remain in the residence of Gary and Cheryl Young for the purpose of committing a crime and also engaged in conduct which provided Andrew Young the means and opportunity to shoot and kill his parents.

Griffith entered a guilty plea on January 30, 2006, to the amended charges of two counts of criminal facilitation to commit murder⁵ and one count of complicity to commit burglary in the first degree. Pursuant to a plea agreement with the Commonwealth, she was sentenced to five years' imprisonment on each of the facilitation charges and ten years' imprisonment on the complicity charge. Her sentences were ordered to be run consecutively for a total term of twenty years' imprisonment. Final judgment was entered on March 6, 2006. No direct appeal was taken from the conviction nor was a collateral attack launched pursuant to RCr⁶ 11.42.

² Kentucky Revised Statutes (KRS) 502.020.

³ KRS 507.020, a capital offense.

⁴ KRS 511.020, a Class B felony.

⁵ KRS 506.080, a Class D felony.

⁶ Kentucky Rules of Criminal Procedure.

Griffith filed the instant motion for post-judgment relief pursuant to CR 60.02(e) and (f) on April 17, 2008. She requested her sentence be amended from consecutive to concurrent service. In support of her motion, Griffith alleged that, due to the overcrowding in Kentucky's penal system, reducing her sentence would lessen the fiscal burden of the prisons and aid in lessening the crowded population. She contended she was convicted for the crimes of another and thus her sentence was not reflective "of her minimal involvement nor is it practical in light of the states (sic) current economy and prison overcrowding problems." Next, Griffith argued her sentence was inequitable as it did not accurately reflect her role in the crimes. She claimed she did little more than hinder the apprehension of Andrew Young and took no part in the acts resulting in the death of Andrew's parents. Finally, Griffith asserted that the Commonwealth violated the terms of a prior plea agreement, and thus amendment of her sentence was warranted. She alleged a meeting took place on the night of her arrest and that an agreement was reached whereby she would be charged only with a lesser crime in exchange for her truthful cooperation. She contended her attorney failed to reduce the agreement to writing, thus allowing the Commonwealth to waltz on the deal with impunity.

In a nine-page order entered on March 4, 2009, the trial court denied Griffith's motion for relief without convening an evidentiary hearing. The court found Griffith's crimes were serious and warranted the sentence imposed, rejecting her contention that she was a non-violent offender and dismissing her argument

regarding the fiscal health of the Commonwealth as inapposite. The Court noted Griffith had entered a voluntary guilty plea and was well aware of the Commonwealth's offer and sentencing recommendation. Thus, it concluded her regrets about entering the plea were insufficient grounds to modify or overturn the agreed upon sentence.

Next, the court observed that Griffith had previously raised the issue of the alleged prior plea agreement which was violated and that an evidentiary hearing had been held and the issue had been thoroughly addressed prior to the entry of her guilty plea. The court recounted its earlier findings that discussions were had regarding the possibility of lesser charges in exchange for Griffith's truthful cooperation but that Griffith had provided inaccurate and misleading responses to numerous inquiries. Thus, as it had previously held that no binding agreement had been reached, it rejected her subsequent attack and found no merit in her contention that her attorney's failure to reduce the agreement to writing was a major factor in her inability to obtain the benefit of the plea negotiations.

Finally, the court stated that although it had considered all of Griffith's arguments on their merits, it would have nevertheless been required to deny the motion on procedural grounds because the issues raised were not properly brought under CR 60.02 but rather should have been raised in a direct appeal or a collateral attack pursuant to RCr 11.42. This appeal followed.

We review the denial of a CR 60.02 motion for an abuse of discretion. *White v. Commonwealth*, 32 S.W.3d 83, 86 (Ky. App. 2000). To warrant relief, the

trial court's decision must have been "arbitrary, unreasonable, unfair, or unsupported by sound legal principals." *Clark v. Commonwealth*, 223 S.W.3d 90, 95 (Ky. 2007). A trial court may grant relief under CR 60.02 only if a movant demonstrates "he is entitled to this special, extraordinary relief." *Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983). We will affirm the trial court's decision absent a "flagrant miscarriage of justice." *Id.* at 858. Motions under CR 60.02 are "not intended merely as an additional opportunity to relitigate the same issues which could 'reasonably have been presented' by direct appeal or RCr 11.42 proceedings." *McQueen v. Commonwealth*, 948 S.W.2d 415, 416 (Ky. 1997) (citations omitted). CR 60.02 "is not a separate avenue of appeal to be pursued in addition to other remedies, but is available only to raise issues which cannot be raised in other proceedings." *Id.* Further, CR 60.02 is an extraordinary remedy to be utilized only when RCr 11.42 has no applicability. The intent is not for CR 60.02 to be an afterthought or substitute for RCr 11.42.

Before this Court, Griffith contends the trial court erred in: (1) failing to find the Commonwealth entered into a binding plea agreement on the night of her arrest and subsequently violated the terms of that agreement; (2) failing to give her the benefit of statutory domestic violence exemptions to the restrictions on probation and parole for violent offenders; and (3) denying her motion without first holding an evidentiary hearing. After a careful review, we discern no error.

First, Griffith argues the trial court erred in failing to find the existence of a binding prior plea agreement. However, as the trial court correctly

noted, Griffith availed herself of the opportunity to raise this issue and, in fact, received an evidentiary hearing on the matter. Although she believed the trial court incorrectly found there was no valid plea agreement, when she entered an unconditional guilty plea, she implicitly agreed with the propriety of the trial court's earlier ruling. An unconditional guilty plea waives the right to appeal any adverse rulings with only a few exceptions which do not apply to the matter at bar. *See Windsor v. Commonwealth*, 250 S.W.3d 306, 307 (Ky. 2008) (some issues survive express waiver of right to appeal including competency, compliance with *Boykin v. Alabama*, 395 U.S. 238, 244, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969), sentencing issues, subject matter jurisdiction and failure to charge a public offense).

The error Griffith alleges is simply not the sort of issue that is exempted under *Windsor*. The plea agreement Griffith signed in open court clearly specified she was waiving her right to appeal her conviction, she knew the terms of the Commonwealth's offer on a plea of guilty, and she had been promised nothing else in return for her plea. Had she wished to preserve any pre-judgment ruling for appellate review, Griffith could have entered a conditional guilty plea pursuant to RCr 8.09.⁷ She did not do so. Further, there is no allegation Griffith's plea was anything other than knowingly, voluntarily and intelligently made. Thus, the entry

⁷ RCr 8.09 states: "[w]ith the approval of the court a defendant may enter a conditional plea of guilty, reserving in writing the right, on appeal from the judgment, to review of the adverse determination of any specified trial or pretrial motion. A defendant shall be allowed to withdraw such plea upon prevailing on appeal."

of her unconditional guilty plea constituted a waiver of the right to appeal the trial court's earlier ruling on the existence of a binding plea agreement, and appellate review is thereby precluded.

Next, Griffith contends the trial court erred in failing to give her the benefit of statutory domestic violence exemptions to the restrictions on probation and parole for violent offenders. She concedes no motion was made before the trial court on this issue and that the proper vehicle for raising this issue was via a motion pursuant to RCr 11.42—based on her counsel's failure to request application of the exemption—but requests lenity because of her *pro se* status. Regardless of whether she moved for relief under CR 60.02 or RCr 11.42, Griffith's contention is without merit.

Griffith contends she is entitled to the exemption because Andrew Young had previously subjected her to domestic violence and abuse. However, Griffith fails to grasp the proper application of the statutory exemption. The domestic violence exemption as it relates to probation, set forth in KRS 533.060(1), applies only when a defendant “establishes that the person against whom the weapon was used had previously or was then engaged in an act or acts of domestic violence and abuse . . . against . . . the person convicted” KRS 439.3401 (5) contains similar language in setting forth the exemption in relation to parole eligibility. Here, Griffith did not use a weapon against Andrew Young, the alleged perpetrator of domestic violence and abuse. Rather, it was Andrew's

parents who perished as a result of the use of a weapon.⁸ No allegation of abuse by either parent against Griffith appears in the record. Thus, it is clear that the statutory domestic violence exemptions do not apply to the case at bar. There was no error.

Finally, Griffith asserts that the trial court should have granted her an evidentiary hearing on her CR 60.02 claims. “A movant is not entitled to a hearing on a CR 60.02 motion unless he affirmatively alleges facts which, if true, justify vacating the judgment and further allege[s] special circumstances that justify CR 60.02 relief.” *White*, 32 S.W.3d at 86 (citation and internal quotation marks omitted). There is no automatic entitlement to a hearing. *Stanford v. Commonwealth*, 854 S.W.2d 742, 744 (Ky. 1993). Only if there is an issue of fact that cannot be determined on the face of the record must the trial court allow an evidentiary hearing. *Id.* at 743-744. If the record refutes her claims of error, there is no basis for holding an evidentiary hearing. *Id.* at 743 (citing *Glass v. Commonwealth*, 474 S.W.2d 400, 401 (Ky. 1971)). The trial court correctly determined, based solely on the record, that Griffith’s CR 60.02 claims were not well taken. Thus, because Griffith asserted no facts supportive of invalidating or amending her conviction, the trial court did not err in disposing of Griffith’s motion without holding an evidentiary hearing.

⁸ Interestingly, Griffith has consistently denied ever firing the weapon. Thus, it is even more unclear how she expects to qualify for the statutory exemption which specifically requires the person convicted to have used a weapon.

For the foregoing reasons, the judgment of the Carter Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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