

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-001808-MR

JEFFREY ALLEN MORRIS

APPELLANT

v. APPEAL FROM PULASKI CIRCUIT COURT
HONORABLE PAUL E. BRADEN, SPECIAL JUDGE
ACTION NO. 02-CR-00095

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: TAYLOR, CHIEF JUDGE; STUMBO, JUDGE; SHAKE,¹ SENIOR JUDGE.

TAYLOR, CHIEF JUDGE: Jeffrey Allen Morris brings this *pro se* appeal from a May 20, 2009, order of the Pulaski Circuit Court denying his Kentucky Rule of Civil Procedure (CR) 60.02 motion to vacate his sentence of imprisonment upon guilty plea. We affirm.

¹ Senior Judge Ann O'Malley Shake sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

The underlying facts of this case are particularly disturbing. In 2002, appellant was indicted by the Pulaski County Grand Jury for complicity to commit capital murder. Based upon three statutory aggravating factors, the Commonwealth gave notice of its intent to seek the death penalty. Appellant was involved in the murder of Pulaski County Sheriff Samuel Wilson Catron. Sheriff Catron was shot in the head while entering his police cruiser. Eventually, it was determined that the shot was fired from a rifle some 72 yards away. Although appellant was not the actual shooter, appellant was involved in planning the murder and allowed the shooter to utilize appellant's motorcycle during the actual commission of the murder.

Appellant eventually entered into a plea agreement with the Commonwealth. In exchange for appellant's testimony at trial against the shooter and appellant's guilty plea, the Commonwealth agreed to recommend a sentence of life imprisonment without the possibility of parole for twenty-five years. In accordance with the plea agreement, appellant pleaded guilty to complicity to commit murder with aggravating circumstances, and he was sentenced in accordance with the Commonwealth's recommendation.

Thereafter, appellant filed a Kentucky Rules of Criminal Procedure (RCr) 11.42 motion to vacate his sentence of imprisonment. He alleged that trial counsel was ineffective in several respects. The motion was denied; an appeal to this Court was affirmed in 2004-CA-002484-MR.

Appellant then filed the current CR 60.02 motion seeking to again vacate his sentence of imprisonment. By order entered May 20, 2009, the circuit court denied the CR 60.02 motion, thus precipitating this appeal.

Appellant contends that the circuit court erred by denying his CR 60.02 motion. Appellant asserts entitlement to CR 60.02 relief because: (1) he was acting under extreme emotional distress during commission of the crime, (2) his guilty plea was entered involuntarily, and (3) trial counsel was ineffective.

CR 60.02 is an extraordinary remedy. *Wilson v. Com.*, 403 S.W.2d 710 (Ky. 1966). It is well-established that CR 60.02 relief is not available to raise issues that could have been raised by either a direct appeal or by RCr 11.42 motion. In the case at hand, all of appellant's allegations could and should have been raised by either direct appeal or by RCr 11.42 motion, which he failed to do. *McQueen v. Com.*, 948 S.W.2d 415 (Ky. 1997). Accordingly, appellant has not demonstrated that he is entitled to CR 60.02 relief.

For the foregoing reasons, the order of the Pulaski Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Jeffrey Allen Morris, *Pro Se*
Fredonia, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

Jason B. Moore
Assistant Attorney General
Frankfort, Kentucky