

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

NO. 2009-CA-001582-MR

DEMETRICK S. ELLIS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE JAMES M. SHAKE, JUDGE  
ACTION NO. 95-CR-003222

COMMOWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE, JUDGE; HENRY AND ISAAC,<sup>1</sup> SENIOR JUDGES.

ACREE, JUDGE: The appellant, Demetrick Ellis, appeals the denial of his Kentucky Rule of Criminal Procedure (RCr) 11.42 motion. The Jefferson Circuit Court denied his motion without an evidentiary hearing and we affirm.

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<sup>1</sup> Senior Judges Michael L. Henry and Sheila R. Isaac sitting as Special Judges by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statute 21.580.

Ellis was tried by a jury and found guilty of murder. The jury was unable to reach a decision on the issue of penalty so the court, by judgment of conviction entered on June 14, 1996, sentenced Ellis to forty years' imprisonment. The conviction was affirmed by the Kentucky Supreme Court on March 12, 1998. A prior RCr 11.42 motion was denied and the decision was affirmed by this court on February 4, 2000. *Ellis v. Commonwealth*, No. 1998-CA-002400-MR (Ky. App., February 4, 2000).

In the appeal now before this Court, Ellis appears to combine an RCr 11.42 motion with a motion pursuant to Kentucky Rule of Civil Procedure (CR) 60.02. However, neither is appropriate.

A motion made pursuant to RCr 11.42 must be made within three years after the judgment becomes final. RCr 11.42(10). While there are exceptions to this rule, they are inapplicable to the facts of this case. *See* RCr 11.42 (10)(a-b). Therefore, because more than ten years have passed since his conviction, the motion is time barred.

Ellis' motion pursuit of CR 60.02 relief is also futile. Some arguments Ellis presents were raised in his first RCr 11.42 motion. Moreover, relief under CR 60.02(a-c) must be sought within one year of the judgment; therefore, no relief is available under CR 60.02(a-c). Relief under CR 60.02(d-f) must be brought within a reasonable period of time after judgment is entered. In this case, judgment was entered more than ten years ago and Ellis presents no new evidence, nor does he

present any evidence that would justify the extraordinary relief afforded by CR 60.02. Thus, waiting more than ten years to assert these claims was unreasonable. We review a trial court's determination regarding CR 60.02 motions for abuse of discretion. *Brown v. Commonwealth*, 932 S.W.2d 359, 362 (Ky. 1996). We see none in this case.

For the above mentioned reasons, we affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

Demetrick Ellis, *Pro se*  
Eddyville, Kentucky

BRIEF FOR APPELLEE:

Jack Conway  
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