

RENDERED: JANUARY 14, 2011; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2009-CA-000997-MR

DARRYL R. REED

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE MARY M. SHAW, JUDGE  
ACTION NOS. 98-CR-002519 & 99-CR-000831

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: TAYLOR, CHIEF JUDGE; DIXON, JUDGE; ISAAC,<sup>1</sup> SENIOR JUDGE.

ISAAC, JUDGE: Darryl R. Reed, *pro se*, appeals from the denial of his motion for post-conviction relief pursuant to Kentucky Rules of Civil Procedure (CR) 60.02.

He argues that his guilty plea was involuntary because he did not understand the

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<sup>1</sup> Senior Judge Sheila R. Isaac sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

consequences of the sentence and the trial court erred by failing to hold an evidentiary hearing. We affirm.

On October 14, 1998, Reed was indicted on two counts of fraudulent use of a credit card (98-CR-2519). He pled guilty pursuant to a plea agreement and was sentenced to three years' imprisonment probated for three years. While on probation, Reed was indicted on one count of first-degree illegal possession of a controlled substance, tampering with physical evidence, and being a second-degree persistent felony offender (PFO)(99-CR-0831). On April 18, 2000, Reed pled guilty to first-degree illegal possession of a controlled substance and tampering with physical evidence pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970). The PFO charge was dismissed and he was sentenced to five years' imprisonment probated for five years. On January 16, 2001, after Reed stipulated to numerous violations of his probation including new charges of second-degree escape and second-degree PFO<sup>2</sup> (99-CR-2072), the trial court revoked Reed's probation in both cases and he was sentenced to eight years to serve. (98-CR-2519 and 99-CR-0831).

On September 6, 2001, the trial court granted Reed's motion for shock probation in 98-CR-2519 and 99-CR-0831 and he was placed on five years of supervised probation. On February 25, 2004, the trial court revoked Reed's shock probation. On August 11, 2008, Reed filed a motion seeking relief from his

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<sup>2</sup> Reed pled guilty to these charges on March 22, 2001.

sentence pursuant to CR 60.02. The trial court entered an opinion and order denying the motion without an evidentiary hearing. This appeal followed.

Reed first argues that his *Alford* plea was involuntary because he did not understand the sentence provided for in the plea agreement and that defense counsel misrepresented the terms of the agreement.

The standard of review of an appeal involving a CR 60.02 motion is whether the trial court abused its discretion. *White v. Commonwealth*, 32 S.W.3d 83, 86 (Ky.App. 2000). The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principals.” *Goodyear Tire & Rubber Co. v. Thompson*, 11 S.W.3d 575, 581 (Ky. 2000). CR 60.02 is not intended merely as an additional opportunity to relitigate the same issues which could “reasonably have been presented” by direct appeal or by RCr 11.42 proceedings. *Gross v. Commonwealth*, 648 S.W.2d 853, 855-56 (Ky. 1983).

The record clearly reflects that Reed understood the sentences he received in both 98-CR-2519 and 99-CR-831. In both cases, the trial court conducted thorough plea colloquies and specifically informed Reed about the offer of sentence. In both cases, Reed stated that he understood. Additionally, in both cases, Reed signed the Commonwealth’s offer and signed a motion to enter a plea of guilty, which reflected the terms of the offer and Reed’s acknowledgment of the terms. After Reed’s probations were revoked, the eight-year sentence was imposed on January 16, 2001. The order granting shock probation of the eight-year

sentence was entered on September 6, 2001. However, Reed raised no complaint or objection regarding his sentence until he filed a CR 60.02 motion on August 11, 2008. Based upon our review of the record, Reed has not demonstrated the extraordinary circumstances necessary to justify relief under CR 60.02. *See Graves v. Commonwealth*, 283 S.W.3d 252, 257 (Ky.App 2009). Additionally, the seven-year delay between the imposition of sentence and the filing of the CR 60.02 motion under the circumstances of this case does not constitute “a reasonable time.” *Id.*; CR 60.02. The trial court did not abuse its discretion. Further, as Reed’s claims were completely refuted by the record, the trial court did not err by failing to conduct an evidentiary hearing. *Stanford v. Commonwealth*, 854 S.W.2d 742, 744 (Ky. 1993). There is no automatic entitlement to a hearing. *Id.*

Accordingly, the order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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