

Commonwealth of Kentucky
Court of Appeals

NO. 2011-CA-001223-MR

STEVIE EARL WORLEY

APPELLANT

v.

APPEAL FROM WHITLEY CIRCUIT COURT
HONORABLE RODERICK MESSER, JUDGE
ACTION NO. 03-CR-00121

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** **

BEFORE: CAPERTON, DIXON, AND TAYLOR, JUDGES.

DIXON, JUDGE: Stevie Earl Worley appeals from the Whitley Circuit Court's order denying his motion to vacate his conviction and sentence pursuant to CR 60.02(e)-(f). Finding no error, we affirm.

In November 2006, Worley was convicted of first-degree manslaughter, and the trial court subsequently sentenced him to eighteen years' imprisonment

pursuant to the jury's recommendation. Worley's conviction stemmed from the August 1, 2003, shooting death of Dustin Cole following an altercation outside Worley's mobile home. A panel of this Court affirmed Worley's conviction on direct appeal. *Worley v. Commonwealth*, 2007-CA-000175-MR (July 3, 2008). In August 2009, the Kentucky Supreme Court denied Worley's request for discretionary review.

In April 2011, Worley, assisted by the department of public advocacy, filed a motion to vacate the judgment pursuant to CR 60.02(e)-(f). The trial court heard oral arguments by counsel, but ultimately denied Worley's motion without an evidentiary hearing. The court's opinion stated, in part:

In his motion for CR 60.02 relief, the Movant contends that his conviction must be set aside because his due process rights were violated as he was not allowed to question a firearms expert concerning the likelihood that the gun used in the shooting had accidentally discharged and [that he] was denied a missing evidence instruction.

At the time of the trial, it was the Commonwealth's position that the rifle in question had been stolen while it had been stored by the Whitley County Sheriff. The Movant now contends that the rifle was not stolen but was, in fact, one of several weapons illegally disposed of by the Sheriff.

. . .

The record does not reflect that the Movant filed an RCr 11.42 motion. As noted above, his direct appeal was rejected. In fact, the same claims made in this motion were addressed in that appeal.

This Court reviews the denial of a CR 60.02 motion under the abuse of discretion standard. *Brown v. Commonwealth*, 932 S.W.2d 359, 362 (Ky. 1996). In *Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983), the Kentucky Supreme Court explained,

The structure provided in Kentucky for attacking the final judgment of a trial court in a criminal case is not haphazard and overlapping, but is organized and complete. That structure is set out in the rules related to direct appeals, in RCr 11.42, and *thereafter* in CR 60.02. CR 60.02 is not intended merely as an additional opportunity to raise [] defenses. It is for relief that is not available by direct appeal and not available under RCr 11.42. The movant must demonstrate why he is entitled to this special, extraordinary relief. Before the movant is entitled to an evidentiary hearing, he must affirmatively allege facts which, if true, justify vacating the judgment and further allege special circumstances that justify CR 60.02 relief.

Thus, it is well-settled that “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.” *McQueen v. Commonwealth*, 948 S.W.2d 415, 416 (Ky. 1997). It is only after a movant has exhausted his remedies pursuant to direct appeal and RCr 11.42 that he may request extraordinary relief pursuant to CR 60.02. *Gross*, 648 S.W.2d at 856. The final disposition of an RCr 11.42 motion, or waiver of the opportunity to make it, “forecloses the defendant from raising any questions under CR 60.02 which are ‘issues that could reasonably have been presented’ by RCr 11.42 proceedings.” *Id.* at 857.

Our review of the record clearly indicates that Worley's CR 60.02 claims are procedurally barred. Similar arguments were raised and rejected in Worley's direct appeal. Furthermore, the specific arguments presented in his CR 60.02 motion are ones that could have been raised in a motion pursuant to RCr 11.42. It is undisputed that Worley failed to exhaust his remedies under RCr 11.42; consequently, he is barred from bringing these claims in a CR 60.02 motion. We conclude that the trial court did not abuse its discretion by denying Worley's CR 60.02 motion without an evidentiary hearing.

For the reasons stated herein, we affirm the judgment of the Whitley Circuit Court.

ALL CONCUR.

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