

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-001973-MR

LERAY GARRETT ANDERSON

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE BRIAN C. EDWARDS, JUDGE
ACTION NO. 91-CR-001421 & 92-CR-001927

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, CHIEF JUDGE; DIXON AND VANMETER, JUDGES.

DIXON, JUDGE: Leray Garrett Anderson appeals from the Jefferson Circuit Court's order denying his motion for post-conviction relief pursuant to CR 60.02(e)-(f). Finding no error, we affirm.

On September 8, 1992, Anderson was indicted for the capital offense of complicity to commit murder and complicity to commit first-degree robbery. In March 1993, Anderson pled guilty to the charges, and the trial court subsequently

imposed a sentence of life imprisonment. In October 1997, Anderson filed an RCr 11.42 motion challenging the validity of his guilty plea and alleging ineffective assistance of counsel. The trial court denied Anderson's motion, and this Court affirmed.¹

In July 2011, eighteen years after his conviction, Anderson filed a motion to vacate the judgment against him pursuant to CR 60.02(e)-(f). Anderson alleged his guilty plea was constitutionally invalid because he was forced to choose whether to plead guilty to capital murder or proceed to trial where the Commonwealth had filed notice of its intent to seek the death penalty. The circuit court summarily denied Anderson's motion, and this appeal followed.

We review the lower court's denial of a CR 60.02 motion under the abuse of discretion standard. *White v. Commonwealth*, 32 S.W.3d 83, 86 (Ky. App. 2000).

Anderson asserts that his guilty plea was constitutionally invalid, and he contends the circuit court failed to issue findings to support its denial of CR 60.02 relief. The Commonwealth contends Anderson's motion was untimely and that his challenge to the validity of the guilty plea should have been raised in his RCr 11.42 motion.

Where, as here, a movant seeks relief pursuant to CR 60.02(e) or (f), the rule requires that the motion must be filed "within a reasonable time." Furthermore, in *Gross v. Commonwealth*, 648 S.W.2d 853, 857 (Ky. 1983), the Kentucky Supreme Court outlined the availability of post-conviction relief as follows:

¹ *Anderson v. Commonwealth*, 1997-CA-002746-MR (Jan. 15, 1999).

[A] defendant is required to avail himself of RCr 11.42 while in custody under sentence or on probation, parole or conditional discharge, as to any ground of which he is aware, or should be aware, during the period when this remedy is available to him. Final disposition of that motion, or waiver of the opportunity to make it, shall conclude all issues that reasonably could have been presented in that proceeding. The language of RCr 11.42 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.

Here, review is foreclosed because Anderson failed to file his motion within a reasonable time, as eighteen years elapsed before he sought CR 60.02 relief.

Likewise, Anderson’s argument challenging the validity of his plea could have been presented in his RCr 11.42 motion; consequently, CR 60.02 relief is unavailable. “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). We conclude that the trial court did not abuse its discretion by summarily denying Anderson’s CR 60.02 motion.

For the reasons stated herein, we affirm the Jefferson Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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