

RENDERED: JANUARY 25, 2013; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2012-CA-000128-MR

LESLIE LEON SCOTT

APPELLANT

v. APPEAL FROM CASEY CIRCUIT COURT  
HONORABLE JAMES G. WEDDLE, JUDGE  
ACTION NO. 03-CR-00021

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: MAZE, MOORE, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Leslie Leon Scott brings this *pro se* appeal from a November 9, 2011, Order of the Casey Circuit Court denying Scott's Kentucky Rules of Civil Procedure (CR) 60.02 motion. We affirm.

Scott was indicted by a Casey County Grand Jury upon three counts of wanton murder, first-degree assault, and operating a motor vehicle under the

influence. A jury trial ensued, and Scott was found guilty but mentally ill of three counts of second-degree manslaughter and of first-degree assault. He was sentenced to a total of fifty-years' imprisonment. Scott pursued a direct appeal of his conviction to the Kentucky Supreme Court. In *Scott v. Commonwealth*, Appeal No. 2004-SC-000310-MR, the Supreme Court affirmed Scott's conviction and sentence of imprisonment.

Eventually, Scott filed a *pro se* CR 60.02 motion to vacate his sentence. Therein, he asserted that the jury reached an inconsistent verdict, and sought reversal of his conviction. By order entered November 9, 2011, the circuit court denied the CR 60.02 motion, thus precipitating this appeal.

Scott contends the circuit court erred by denying his CR 60.02 motion. Specifically, Scott argues:

Subsection (1)(c) of [Kentucky Revised Statutes] KRS 508.020 provides for the second highest degree of "unintentional" assault. The only difference between this offense and the highest degree of unintentional assault (i.e. assault in the first degree committed through wantonness) is a requirement in the latter that a defendant's conduct manifest "extreme indifference to the value of human life." **THIS IS OF COURSE, THE SAME REQUIREMENT USED IN HOMICIDE TO DISTINGUISH "UNINTENTIONAL" MURDER FROM MANSLAUGHTER IN THE SECOND DEGREE.**

In treating this situation as first[-]degree assault, "extreme wantonness" is equated in terms of criminal culpability with "intentional" injury causing conduct involving the use of a deadly weapon, an example of the behavior punishable under this subsection would be an injury-causing "conscious act" of shooting into a crowd

without specific intent to kill or wound, this of course is the same type of conduct punishable as murder under KRS 507.020, if death rather than serious injury is the consequence.

The Appellant, “acted without intent to kill or cause serious physical injury” due to a “drug overdose,” though he failed to perceive the substantial and unjustifiable risk that his actions would have resulted in the death of three people and seriously injuring another.

The verdict of three counts of second[-]degree manslaughter is inconsistent with the verdict of first[-] degree assault, since both verdicts were a result of the same evidence, resulting from the four offenses occurring from a single incident.

The jury, by returning a charge of three counts of second[-]degree manslaughter, instead on wanton murder, the jury found the Appellant’s conduct met the definition of “wantonly” pursuant to the statutory definition given in the jury instructions and by implication found that the Appellant’s conduct did not “manifest extreme indifference to human life.”

Scott’s Brief at 3-5.

It is well-established that CR 60.02 is an extraordinary remedy and is only available to raise issues not amenable to other avenues of relief. *Sanders v. Com.*, 339 S.W.3d 427 (Ky. 2011). Consequently, CR 60.02 relief is unavailable to relitigate issues that were or reasonably could have been presented by direct appeal or Kentucky Rules of Criminal Procedure (RCr) 11.42 proceedings. *McQueen v. Com.*, 948 S.W.2d 415 (Ky. 1997).

In the case *sub judice*, the exact issue of inconsistent jury verdicts was previously raised and adjudicated by the Supreme Court in its opinion affirming

Scott's direct appeal. In *Scott v. Commonwealth*, Appeal No. 2004-SC-000310-

MR, the Supreme Court held:

In the instant case, Appellant purposefully ingested an extraordinary quantity of his prescription anti-depressant medication. As one to whom such medication was prescribed, the jury was entitled to believe that Appellant knew the risk involved particularly when he stated his intention was to commit suicide. That he stopped and called his estranged wife to tell her that his driving had become erratic, but nevertheless began driving again until he struck another vehicle, further supports the jury verdict with respect to Appellant's extreme indifference to the value of human life. Thus, there was sufficient evidence to support the verdict on the first-degree assault charge and ample evidence to sustain each manslaughter conviction. As a practical matter, the statutes at issue here are highly nuanced and their application to the evidence presented is best left to the jury.

As the exact issue of inconsistent jury verdicts was previously decided by the Supreme Court in Scott's direct appeal, we do not believe that this issue constitutes adequate grounds for relief under CR 60.02. *McQueen*, 948 S.W.2d 415; *Barnett v. Com.*, 979 S.W.2d 98 (Ky. 1998). Thus, we are of the opinion that the circuit court properly denied Scott's CR 60.02 motion.

For the foregoing reasons, the Order of the Casey Circuit Court is affirmed.

ALL CONCUR.

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