

RENDERED: JULY 5, 2013; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2012-CA-000594-MR

RICHARD HENRY MORGAN

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE ERNESTO M. SCORSONE, JUDGE  
ACTION NOS. 92-CR-00268 & 92-CR-00459

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, MOORE, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Richard Henry Morgan brings this *pro se* appeal from a February 28, 2012, order of the Fayette Circuit Court denying a Kentucky Rules of Civil Procedure (CR) 60.02 motion to vacate his sentence of imprisonment. We affirm.

In 1992, appellant was convicted of murder, two counts of robbery, and with being a first-degree persistent felony offender. In a direct appeal (Appeal No. 92-SC-1015-MR), the Kentucky Supreme Court affirmed in part and remanded in part for resentencing. In accordance therewith, appellant was ultimately resentenced to life imprisonment without the possibility of parole for twenty-five years. This sentence of imprisonment was affirmed by the Supreme Court in Appeal No. 95-SC-0033-MR.

In 1994, appellant filed a CR 60.02 motion, and in 1997, a Kentucky Rules of Criminal Procedure (RCr) 11.42 motion to vacate his sentence of imprisonment; both motions were denied by the circuit court. In Appeal No. 95-CA-000568-MR, the Court of Appeals affirmed the circuit court's denial of the CR 60.02 motion, and in Appeal Nos. 1997-CA-002715-MR and 1997-CA-002592-MR, the Court of Appeals affirmed the circuit court's denial of his RCr 11.42 motion. Appellant subsequently filed various motions and petitions in state and federal courts seeking a new trial or release from custody.

Then, in 2011, appellant filed the underlying CR 60.02 motion to vacate his sentence of imprisonment. He argued that the circuit court violated Kentucky Revised Statutes (KRS) 532.025(3) by imposing the sentence of life imprisonment without the possibility of parole for twenty-five years without designating an aggravating circumstance in the judgment. By order entered February 28, 2012, the circuit court denied appellant's CR 60.02 motion. This appeal follows.

Appellant contends that the circuit court erred by denying the CR 60.02 motion to vacate his sentence of imprisonment. Specifically, appellant maintains that the trial court violated KRS 532.025(3) by not specifying an aggravating circumstance before sentencing him to life imprisonment without the possibility of parole for twenty-five years. We disagree.

KRS 532.025(3) reads:

The instructions as determined by the trial judge to be warranted by the evidence or as required by [KRS 532.030\(4\)](#) shall be given in charge and in writing to the jury for its deliberation. The jury, if its verdict be a recommendation of death, or imprisonment for life without benefit of probation or parole, or imprisonment for life without benefit of probation or parole until the defendant has served a minimum of twenty-five (25) years of his sentence, shall designate in writing, signed by the foreman of the jury, the aggravating circumstance or circumstances which it found beyond a reasonable doubt. In nonjury cases, the judge shall make such designation. In all cases unless at least one (1) of the statutory aggravating circumstances enumerated in subsection (2) of this section is so found, the death penalty, or imprisonment for life without benefit of probation or parole, or the sentence to imprisonment for life without benefit of probation or parole until the defendant has served a minimum of twenty-five (25) years of his sentence, shall not be imposed.

In this case, appellant was originally sentenced by a jury, and the jury did find an aggravating circumstance before recommending the sentence of life imprisonment without the possibility of parole for twenty-five years upon the murder conviction.<sup>1</sup> In Appeal No. 92-SC-1015-MR, the Supreme Court upheld

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<sup>1</sup> Specifically, the jury found:

the jury's conviction of appellant and the recommended sentence of life imprisonment without the possibility of parole for twenty-five years; the Supreme Court merely reversed the circuit court's decision to run certain sentences consecutively instead of concurrently. As the jury did find an aggravating circumstance under KRS 532.025(3) before recommending a sentence of life without the possibility of parole for twenty-five years for murder, we agree with the circuit court that no violation of KRS 532.025(3) occurred.

We, therefore, conclude that appellant failed to demonstrate entitlement to the extraordinary relief of CR 60.02 and that the circuit court properly denied appellant's CR 60.02 motion. *See Wilson v. Com.*, 403 S.W.2d 710 (Ky. 1996).

For the foregoing reasons, the order of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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We the jury, by unanimous vote, find that the aggravating circumstance described in Instruction No. 11, "That at the time he killed Timothy Graham the defendant was engaged in robbing Joe Nelson or Timothy Graham and that in the course of so doing and with intent to accomplish the robbery he threatened the immediate use of physical force upon either Joe Nelson or Timothy Graham with a pistol." HAS been proven from the evidence beyond a reasonable doubt. /s/ Helen M. Larkowski, FOREMAN.

(iii) We the jury fix the defendant's punishment at confinement in the penitentiary for life without benefit of probation or parole until he has served a minimum of 25 years of his sentence. /s/ Helen M. Larkowski, FORMAN. [sic]

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