

RENDERED: OCTOBER 4, 2013; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2012-CA-000654-MR

JAMES J. NOONAN (BLAIR)

APPELLANT

v. APPEAL FROM GRAVES CIRCUIT COURT
HONORABLE TIMOTHY C STARK JUDGE
ACTION NO. 06-CR-00170

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: MAZE, STUMBO AND VANMETER, JUDGES.

MAZE, JUDGE: On June 29, 2006, a Graves County grand jury indicted James Blair (a/k/a James Noonan) on four counts of first-degree sexual abuse, and one count each of possession of a controlled substance (cocaine), first offense, possession of drug paraphernalia, first offense, and being a persistent felony offender in the first degree (PFO I). Prior to trial, the drug charges were severed

from the sexual abuse and PFO charges. At the close of the Commonwealth's case, the trial court dismissed one of the sexual abuse charges on venue grounds. Thereafter, the jury found Blair guilty on the remaining three counts of first-degree sexual abuse. However, the jury was unable to reach an agreement on the sentence. Subsequently, Blair agreed to the Commonwealth's offer of a total of ten years' imprisonment. He also reserved his right to appeal from the penalty phase.

But prior to entry of the final judgment of conviction, Blair filed a *pro se* motion pursuant to Kentucky Rule of Criminal Procedure (RCr) 10.02, seeking a new trial. The trial court denied the motion on August 31, 2007. Shortly thereafter, Blair filed a supplemental motion for a new trial. The trial court denied this motion on October 4, 2007. Thereafter, Blair filed a notice of appeal from the judgment of conviction. However, Blair withdrew the brief filed by his appointed counsel and moved to dismiss the appeal. On November 20, 2008, this Court granted the motion to dismiss, and also dismissed a duplicative appeal filed by Blair.

In 2008 and 2009, Blair filed *habeas corpus* motions in state and federal courts seeking relief from his conviction. Those motions were unsuccessful. On September 30, 2011, Blair (under the name James Noonan) filed his current *pro se* motion, seeking to set aside his conviction pursuant to Kentucky Rule of Civil Procedure (CR) 60.02(d), (e) and (f). In the motion, Blair/Noonan asserted that he was entitled to relief because: (1) the indictment failed to charge a felony offense; (2) he was innocent of the charges; (3) the prosecutor abuse of the

grand jury proceedings; (4) “impeachment of the trial court’s record by the trial court’s record;” and (5) the judgment was void *ab initio*. Blair also filed a motion seeking recusal of the trial judge.

On February 29, 2012, the trial court entered an order denying these motions. However, Blair/Noonan filed an untimely reply to the Commonwealth’s response to his initial motion. Consequently, the trial court entered an amended order on March 21, 2012, again denying both motions. This appeal followed. Since the notice of appeal was filed under the name James J. Noonan, we shall use that name hereafter.

It is well-established that CR 60.02 is for relief that is not available by direct appeal and not available collaterally under RCr 11.42. *Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983). CR 60.02 is not intended to afford individuals an additional opportunity to re-litigate issues that have already been presented in an earlier direct appeal or collateral attack or present new issues that could have been raised in those proceedings. *McQueen v. Commonwealth*, 948 S.W.2d 415, 416 (Ky. 1997); RCr 11.42(3). And CR 60.02 should only be used to provide relief when the movant demonstrates why he or she is entitled to the special, extraordinary relief provided by the rule. *Gross*, 648 S.W.2d at 856. Finally, claims under CR 60.02(e) and (f) must be raised within a reasonable time.

Noonan has met none of the requirements for relief under CR 60.02. Noonan generally alleges that the trial court was biased against him, but he has made no showing that the trial judge’s impartiality might reasonably be

questioned. KRS 26A.015(2). Moreover, the trial court's adverse rulings, even if erroneous, do not provide a basis for finding bias. *Bissell v. Baumgardner*, 236 S.W.3d 24, 29 (Ky. App. 2007). He alleges that the judgment is void due to deficiencies in the indictment. However, it is well-established that, unless the indictment fails to charge a public offense, defects in an indictment are not jurisdictional and can be waived unless timely raised. See RCr 8.18, and *Bennington v. Commonwealth*, 348 S.W.3d 613, 621-22 (Ky. 2011). The alleged errors in the indictment are not jurisdictional. Furthermore, they were known at the time of trial, and should have been raised on direct appeal or a properly-filed RCr 11.42 motion. *Gross*, 648 S.W.2d at 856. Noonan's remaining allegations lack sufficient specificity to merit further discussion. *Stoker v. Commonwealth*, 289 S.W.3d 592, 597 (Ky. App. 2009). Therefore, the trial court properly denied Noonan's CR 60.02 motion.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

James J. Noonan (Blair Jr.), Pro Se
Eddyville, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

Jason B. Moore
Assistant Attorney General
Frankfort, Kentucky