

RENDERED: OCTOBER 18, 2013; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-001284-MR
AND
NO. 2012-CA-002024-MR
AND
NO. 2012-CA-002025-MR

LUTHER CREECH

APPELLANT

v. APPEALS FROM GARRARD CIRCUIT COURT
HONORABLE C. HUNTER DAUGHERTY, JUDGE
INDICTMENT NO. 08-CR-00092

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, NICKELL AND MAZE JUDGES.

MAZE, JUDGE: Luther Creech appeals from the June 19, 2012, order of the Garrard Circuit Court denying Creech's motion for Kentucky Rules of Criminal Procedure (CR) 60.02 relief. Because we hold that the trial court did not abuse its discretion, we affirm.

In 2008, Creech beat, stabbed and choked his wife to death. Following multiple hearings and mental inquests, Creech was ultimately determined competent to stand trial. Pursuant to an agreement with the Commonwealth, Creech entered a plea of guilty but mentally ill and was sentenced to serve twenty-four years. Thereafter, Creech filed a motion pursuant to Kentucky Rules of Criminal Procedure (RCr) 11.42, alleging ineffective assistance of counsel and specifically claiming that he unknowingly and involuntarily entered into his guilty plea. The trial court denied the motion without a hearing and Creech appealed. This Court affirmed the trial court's denial of Creech's RCr 11.42 motion. *See Creech v. Commonwealth*, 2011-CA-000127-MR, 2012 WL 4036268 (Ky.App. 2012).

On June 14, 2012, Creech filed a CR 60.02 motion to vacate the judgment or set aside the sentence. Therein, Creech argued that his trial counsel had provided him with fraudulent and misleading advice, that he had involuntarily entered into his plea and that a separate *habeas corpus* action filed in Oldham Circuit Court had been improperly dismissed for lack of jurisdiction. The trial court denied Creech's motion on a calendar docket sheet entered on June 19, 2012, which stated, "denied for reasons previously stated." Creech appealed to this Court.

On August 17, 2012, Creech filed motions requesting a final and appealable order and additional findings of fact and conclusions of law. Creech then filed a notice of compliance in which he advised that he would be filing a writ

of mandamus or a writ of prohibition with this Court in response to the trial court's failure to respond to his two August 17, 2012, motions. In response, the trial court issued a new order on a calendar docket sheet which referenced the June 19, 2012, order denying his CR 60.02 motion. That order was entered on October 25, 2012. Thereafter, Creech filed second and third, seemingly identical, appeals under Appeal Nos. 2012-CA-002024-MR and 2012-CA-002025-MR. On April 11, 2013, by the Court's own motion, these appeals, along with Creech's CR 60.02 appeal, were consolidated into the case presently before us.

On appeal, this Court has gleaned the following arguments from Creech's briefs: that his plea should have been vacated; that he was entitled to an evidentiary hearing on his CR 60.02 motion; and that the trial court erred when it failed to grant a final and appealable order. We review a trial court's disposition of a CR 60.02 motion for an abuse of discretion. *White v. Commonwealth*, 32 S.W.3d 83 (Ky. App. 2000). "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Miller v. Eldridge*, 146 S.W.3d 909, 914 (Ky. 2004) (citation omitted). For the following reasons, we hold that the trial court did not abuse its discretion when it denied Creech's motion for CR 60.02 relief.

"In order to be eligible for CR 60.02 relief, the movant must demonstrate why he is entitled to this special, extraordinary relief." *Sanders v. Commonwealth*, 339 S.W.3d 427, 437 (Ky. 2011) (quoting *Barnett v. Commonwealth*, 979 S.W.2d 98, 101 (Ky.1998)). In addition, "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.” *McQueen v. Commonwealth*, 948 S.W.2d 415, 416 (Ky. 1997). “The rule is not intended as merely an additional opportunity to raise claims which could and should have been raised in prior proceedings, but, rather, is for relief that is not available by direct appeal and not available under RCr 11.42.” *Sanders v. Commonwealth*, 339 S.W.3d at 437 (citation omitted). In this case, Creech’s CR 60.02 argument merely rehashes claims previously made in his RCr 11.42 motion. That particular relief was previously denied by the trial court, and that denial was affirmed by this Court. *See Creech*, 2012 WL 4036268. Accordingly, Creech is barred from reasserting it in his CR 60.02 motion. In addition, any issues pertaining to the Oldham County *habeas corpus* action should have been addressed therein. Accordingly, we find no abuse of discretion in the trial court’s denial of his motion for relief.

Lastly, we hold that the record directly refutes Creech’s argument that the trial court erred when it failed to grant a final and appealable order.

A judgment is a written order of a court adjudicating a claim or claims in an action or proceeding. A final or appealable judgment is a final order adjudicating all the rights of all the parties in an action or proceeding, or a judgment made final under Rule 54.02.

(CR 54.01). Creech’s CR 60.02 motion was the only claim awaiting adjudication at the time the June 19, 2012, order was issued and entered. The trial court’s calendar docket sheet clearly states that Creech’s CR 60.02 motion was denied for

reasons previously stated. For the reason Creech has failed to indicate any way in which the order was deficient, his argument is without merit.

For the foregoing reasons, the June 19, 2012, order of the Garrard Circuit Court is affirmed.

ALL CONCUR.

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