

RENDERED: NOVEMBER 1, 2013; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2012-CA-002026-MR

SHAWN ERNST

APPELLANT

v. APPEAL FROM BOONE CIRCUIT COURT
HONORABLE JAMES R. SCHRAND II, JUDGE
ACTION NOS. 00-CR-00154 AND 02-CR-00024

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: COMBS, NICKELL, AND STUMBO, JUDGES.

COMBS, JUDGE: Shawn Ernst, *pro se*, appeals the order of the Boone Circuit Court which denied his motion for a new trial. After our review, we affirm.

Only the procedural facts are necessary for this review; the gruesome details of the underlying charges have been recited in previous opinions. *Ernst v.*

Commonwealth, 160 S.W.3d 744 (Ky. 2005) (*Ernst I*); *Ernst v. Commonwealth*,

2011 WL 1706532 (Ky. App. May 6, 2011) (*Ernst II*). On October 16, 2002, a jury found Ernst guilty of kidnapping and murder. He was sentenced to life in prison for the murder charge and to life imprisonment without the possibility of parole for the kidnapping conviction. The Supreme Court affirmed his conviction in 2005. *Ernst I*. In 2009, Ernst filed a motion to vacate the conviction pursuant to Kentucky Rule[s] of Criminal Procedure (RCr) 11.42. In *Ernst II*, the Court of Appeals affirmed the denial of the motion. Ernst filed a motion for a new trial in March 2012, which the trial court denied on November 2, 2012. This appeal follows.

In his brief, Ernst does not cite to the record nor to any legal authority. It appears that he is trying to make arguments regarding the sufficiency of the evidence as well as prosecutorial misconduct. Ernst bases his motion on RCr 10.02, 10.06, and 10.26. RCr 10.02 authorizes a motion for a new trial; but RCr 10.06 limits the time period of the motion to five days after the verdict. Ernst's motion was filed nearly ten years after the verdict. "To permit the setting up of a new ground by an amended motion after the time for filing a motion for a new trial has expired would do violence to the criminal rules referred to." *Hunter v. Commonwealth*, 479 S.W.2d 4, 5 (Ky. 1972).

Furthermore, as the trial court pointed out, Ernst has already challenged his convictions pursuant to RCr 11.42. That rule is designed to dispose of *all* issues and grounds for reversal that could reasonably exist. RCr 11.42(3); *Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983). Ernst does not present any

arguments that could not have been made at the time of his RCr 11.42 motion in 2009. Additionally, we note that Ernst has not offered any proof for the allegations set forth in his brief.

Therefore, we are unable to conclude that the trial court erred. We affirm the order of the Boone Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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