

RENDERED: AUGUST 1, 2014; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2012-CA-001800-MR

MATTHEW ISERAL

APPELLANT

v. APPEAL FROM MCCREARY CIRCUIT COURT  
HONORABLE DANIEL BALLOU, JUDGE  
ACTION NO. 00-CR-00038

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CAPERTON, COMBS, AND VANMETER, JUDGES.

CAPERTON, JUDGE: Matthew Iseral appeals from a McCreary Circuit Court order denying his post-conviction motion made pursuant to Kentucky Rules of Civil Procedure (CR) 60.02 and Kentucky Rules of Criminal Procedure (RCr) 10.26.

In 2001, a jury found Iseral guilty of first-degree rape and murder. The Kentucky Supreme Court affirmed the conviction, but remanded the case for a new sentencing phase. *Iseral v. Commonwealth*, 2003 WL 22227193 (Ky. 2003) (2001-SC-0602-MR). Iseral entered into an agreement under which he was sentenced to fifty years' imprisonment. He then filed a RCr 11.42 motion, alleging ineffective assistance of trial counsel. The trial court denied the motion and its decision was affirmed by this Court. *Iseral v. Commonwealth*, 2008 WL 4998501 (Ky. App. 2008)(2007-CA-001714-MR), disc. rev. denied Oct. 21, 2009.

Iseral filed his CR 60.02 motion on July 2, 2012. The trial court denied the motion without a hearing, and this appeal followed.

We review the denial of a CR 60.02 motion for an abuse of discretion. *Partin v. Commonwealth*, 337 S.W.3d 639, 640 (Ky. App. 2010). The test for abuse of discretion is whether the trial court's decision was "arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999) (internal citations omitted). A movant must demonstrate that "he is entitled to this special, extraordinary relief." *Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983). We will affirm the trial court's decision absent a "flagrant miscarriage of justice." *Id.* at 858.

On direct appeal, the Kentucky Supreme Court set forth the underlying facts of the case:

On June 8, 2000, police discovered a shallow grave in McCreary County containing the remains of T.D. Testimony at trial described the events surrounding

T.D.'s final hours progressing from her rape to her eventual murder on July 29, 1999. She began the evening innocently enough, visiting area bars in the company of a friend. As night advanced into early morning, however, T.D. found herself on the darkened porch of a burned out house and at the mercy of several men, including Appellant [Matthew Iseral], his father Walter Iseral, and Daniel Tapley. The Commonwealth indicted each of these three men for repeatedly raping T.D. while they sat about the porch drinking and taking pills. Following these attacks the men trundled their victim, naked but for a sleeping bag wrapped around her, deep into the woods where she was raped once again. An eyewitness [Joey Spradlin] described his incredulity as he watched Appellant next lead the victim to a newly dug grave into which she silently laid herself down. Appellant then pulled back the hammer of his sawed-off shotgun and killed T.D.

*Iseral v. Commonwealth*, 2003 WL 22227193 at 1.

Iseral argues that he is entitled to a new trial because one of the prosecution witnesses, Ben Coffey, recently recanted his testimony. At trial, Coffey testified that he recognized the murder weapon as a shotgun he had lent to Iseral. In his affidavit attached to Iseral's motion, Coffey claims that he was coerced into making the identification by a police detective and the Commonwealth Attorney, although he had no idea whether the gun was the one he had lent to Iseral several years before.

The trial court found that the affidavit was not credible, pointing out that Coffey, a fellow inmate of Iseral's, was also serving a lengthy sentence for rape, for which he had been prosecuted by the same Commonwealth's Attorney who allegedly had coerced his testimony against Iseral. The trial court also held that the

claim was time-barred, because it should have been brought pursuant to CR 60.02(c), which permits a court to grant relief on the grounds of perjury or falsified evidence, but only one year after judgment. The trial court further found that, even if Coffey's affidavit was accepted as truthful, it did not warrant granting relief.

We agree with the trial court's analysis. Although Iseral describes Coffey as the Commonwealth's "key and only" witness, there was other, highly persuasive evidence to support his conviction, including the testimony of Joey Spradlin, who witnessed the rape and murder. Coffey's affidavit, even if true, simply does not justify vacating the judgment, and the trial court did not abuse its discretion in ruling thusly.

Iseral further argues that he should not have been charged and indicted for first-degree rape because there was no evidence that a rape ever occurred. He argues that Spradlin's testimony failed to establish that Iseral ever had sexual intercourse with the victim while she was physically helpless or under forcible compulsion. He also questions Spradlin's credibility, claiming that he is a police informant and the actual murderer of T.D. This issue was raised and resolved by the Supreme Court in Iseral's direct appeal:

Appellant posits that the eyewitness to the rape lacked credibility, and that no direct evidence proved the rape actually occurred. Appellant ignores that the credibility of witnesses and the weight to give to the evidence are matters for the jury to decide.

The Commonwealth presented more than ample evidence for reasonable jurors to conclude that Appellant raped T.D. The evidence introduced at trial included: an

eyewitness account of the multiple instances of sexual intercourse between T.D., Appellant, and his two co-defendants on the night of her murder; a statement by the victim telling Appellant to stop intercourse; and the subsequent shooting and burial of T.D., an apparent attempt to destroy evidence of the rape. We therefore find no error in the trial court's denial of the motion for directed verdict.

*Iseral*, 2003 WL 22227193 at 4-5 (internal citations omitted).

Iseral's argument concerning the sufficiency of the evidence supporting the rape charge is therefore barred from our consideration because the ruling of the Supreme Court has become the law of the case. "The law of the case doctrine is 'an iron rule, universally recognized, that an opinion or decision of an appellate court in the same cause is the law of the case for a subsequent trial or appeal however erroneous the opinion or decision may have been.'" *Brooks v.*

*Lexington-Fayette Urban County Hous. Auth.*, 244 S.W.3d 747, 751 (Ky. App. 2007) (quoting *Union Light, Heat & Power Co. v. Blackwell's Ad'r*, 291 S.W.2d 539, 542 (Ky. 1956)).

Furthermore, Iseral's claim regarding the rape charge is inimical to the structure provided in Kentucky for attacking the final judgment of the trial court in a criminal case, which is "not haphazard and overlapping, but is organized and complete. That structure is set out in the rules related to direct appeals, in RCr 11.42, and *thereafter* in CR 60.02." *Gross*, 648 S.W.2d at 856.

Civil Rule 60.02 is not intended merely as an additional opportunity to relitigate the same issues which could "reasonably have been presented" by direct appeal or RCr 11.42 proceedings. . . . The obvious purpose of

this principle is to prevent the relitigation of issues which either were or could have been litigated in a similar proceeding. . . . CR 60.02 is not a separate avenue of appeal to be pursued in addition to other remedies, but is available only to raise issues which cannot be raised in other proceedings.

*McQueen v. Commonwealth*, 948 S.W.2d 415, 416 (Ky. 1997) (internal citations omitted).

Iseral's claim concerning the rape charge was raised, fully addressed and resolved in earlier proceedings; it may not be relitigated under the guise of a CR 60.02 motion.

Finally, Iseral claims that he was entitled to a hearing on his motion. Such a hearing is required only if the movant "affirmatively alleges facts which, if true, justify vacating the judgment and further allege[s] special circumstances that justify CR 60.02 relief." *White v. Commonwealth*, 32 S.W.3d 83, 86 (Ky. App. 2000). Because Iseral failed to make such a showing, the trial court did not abuse its discretion in denying his motion without a hearing.

The order denying Iseral's motion to vacate and set aside final judgment and sentence is affirmed.

ALL CONCUR.

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