

RENDERED: OCTOBER 17, 2014; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2013-CA-000699-MR

JOHN MARTIN

APPELLANT

v. APPEAL FROM ANDERSON CIRCUIT COURT
HONORABLE CHARLES R. HICKMAN JUDGE
ACTION NO. 09-CR-00042

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: ACREE, CHIEF JUDGE; DIXON AND TAYLOR, JUDGES.

TAYLOR, JUDGE: John Martin brings this appeal from a March 11, 2013, order of the Anderson Circuit Court denying his motion to correct the presentence investigation report. We affirm.

In April 2011, appellant was convicted of various felonies and was sentenced to twenty-three years' imprisonment. Nearly two years later, in March 2013, appellant filed a motion to correct his presentence investigation report (PSI). Appellant objected to "information in his PSI relating to fourteen counts of unlawful transaction with a minor." Appellant's Brief at 1. Appellant argued that he was never indicted upon these charges due to insufficient evidence; thus, this information should not have been included in the PSI. The circuit court denied the motion by order entered March 11, 2013. This appeal follows.

Appellant contends that the circuit court erred by denying his motion to correct the PSI. Specifically, appellant claims entitlement to relief under Kentucky Rules of Civil Procedure (CR) 60.02(a) as there was a mistake in the contents of the PSI.

CR 60.02 provides:

On motion a court may, upon such terms as are just, relieve a party or his legal representative from its final judgment, order, or proceeding upon the following grounds: (a) mistake, inadvertence, surprise or excusable neglect; . . . The motion shall be made within a reasonable time, and on grounds (a), (b), and (c) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this rule does not affect the finality of a judgment or suspend its operation.

Under CR 60.02(a), the motion must be filed within one year of the judgment and failure to do so is a bar to relief. *Duncan v. Com.*, 614 S.W.2d 701 (Ky. 1981), *overruled on other grounds by Winstead v. Com.*, 327 S.W.3d 479 (Ky. 2010). In this case, it is undisputed that appellant's motion to correct the PSI

was filed March 4, 2013, almost two years after his judgment of conviction. Thus, the motion is time-barred under CR 60.02. Moreover, we cannot say that appellant would be entitled to relief upon the merits if the motion were timely filed.

Kentucky Revised Statutes 532.050. Accordingly, we hold that the circuit court properly denied appellant's motion to correct PSI.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

Margaret A. Ivie
Department of Public Advocacy
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

Christian K.R. Miller
Assistant Attorney General
Frankfort, Kentucky