

Commonwealth of Kentucky
Court of Appeals

NO. 2013-CA-001032-MR

MARK A. PRICE

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE JULIE REINHARDT WARD, JUDGE
ACTION NO. 01-CR-00367

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: JONES, MAZE, AND MOORE, JUDGES.

JONES, JUDGE: Acting without the assistance of counsel, the Appellant, Mark A. Price, appeals the Campbell Circuit Court's order denying his Kentucky Rule of Civil Procedure (CR) 60.02 motion. Price's primary contention on appeal is that the Commonwealth violated his constitutional rights with respect to his conviction

as a persistent felony offender (PFO). For the reasons more fully explained below, we affirm.

I.

In September 2001, Price was indicted for receiving stolen property over \$300, first-degree fleeing and evading police, first-degree wanton endangerment, and for being a first-degree PFO. Following a jury trial, Price was found guilty of receiving stolen property over \$300, first-degree fleeing and evading police, and second-degree wanton endangerment.¹ Price then pleaded guilty to being a PFO in the third degree. He was sentenced to serve a total of fifteen years.

With the assistance of counsel, Price filed a direct appeal of his conviction and sentence. On appeal, this Court affirmed Price's convictions and sentence. *Price v. Commonwealth*, 2002-CA-000406-MR (May 30, 2003). The Kentucky Supreme Court denied discretionary review on March 10, 2004. *Price v. Commonwealth*, 2003-SC-0490-D (March 10, 2004).

Thereafter, Price embarked upon a series of unsuccessful motions pursuant to RCr 11.42 and CR 60.02. *See, e.g., Price v. Commonwealth*, 2006-CA-000652-MR (November 20, 2007); *Price v. Commonwealth*, 2009-CA-000250-MR (July 19, 2010).

¹ The Commonwealth subsequently moved to dismiss the misdemeanor wanton endangerment charge.

This appeal arises from Price's latest challenge. He asserts herein that his rights were violated when case number 01-CR-00095, which was still pending, was utilized to support a PFO charge in present action.

II.

"The standard of review of an appeal involving a CR 60.02 motion is whether the trial court abused its discretion." White v. Commonwealth, 32 S.W.3d 83, 86 (Ky. App. 2000). Upon review, we do not believe that the trial court abused its discretion in denying Price's most recent motion.

Price previously asserted this argument before the trial court and the issue was appealed to this Court. On appeal, we affirmed the trial court. Any alleged errors in the opinion of this Court susceptible to correction could have been brought to the Court's attention via a petition for rehearing under [CR 76.32](#); Price did not file such a motion. The opinion of this Court is now final and 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 Housing Authority, 244 S.W.3d 747 (Ky. App. 2007) (quoting Union Light, Heat & Power Co. v. Blackwell's Adm'r, 291 S.W.2d 539, 542 (Ky. 1956)).

Additionally, our Supreme Court recently denounced the use of successive CR 60.02 motions:

Similarly, CR 60.02 does not permit successive post-judgment motions, and the rule may be utilized only in extraordinary situations when relief is not available on direct appeal or under RCr 11.42. *McQueen v. Commonwealth*, 948 S.W.2d 415, 416 (Ky. 1997). That is, CR 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 an RCr 11.42 proceeding. *Id.* Indeed, RCr 11.42(3) makes clear that the movant shall, in his RCr 11.42 petition, state all grounds for holding the sentence invalid of which the movant has knowledge. Thus, final disposition of a movant's RCr 11.42 motion shall conclude all issues which could reasonably have been presented in the same proceeding. *Gross*, 648 S.W.2d 853; *see also Shepherd v. Commonwealth*, 477 S.W.2d 798, 799 (Ky. 1972) (“this court will not review matters which have been or should have been raised and reviewed in prior motions to vacate.”); *Gross*, 648 S.W.2d at 856 (CR 60.02 was never meant to be used as just another vehicle to revisit issues that should have been included or could have been included in prior requests for relief. Nor is it intended to be used as a method of gaining yet another chance to relitigate previously determined issues.). According to the trial court's calculations, in addition to his direct appeal and RCr 11.42 petition (and federal habeas corpus proceeding), Appellant has filed five prior 60.02 motions. Accordingly, the trial court did not abuse its discretion in concluding that Appellant's present filing is an impermissible successive CR 60.02 motion.

Foley v. Commonwealth, 425 S.W.3d 880, 884 (Ky. 2014) (internal footnote omitted).

Price has previously asserted the same argument he presented to the trial court as part of several different motions. He is simply attempting to relitigate

the issue. The trial court did not abuse its discretion in denying Price's most recent motion. Accordingly, we affirm the Campbell Circuit Court.

ALL CONCUR.

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