

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-000289-MR

KEATH BRAMBLETT

APPELLANT

v. APPEAL FROM OWEN CIRCUIT COURT
HONORABLE STEPHEN L. BATES, JUDGE
ACTION NO. 01-CR-00015

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: CAPERTON, COMBS, AND VANMETER, JUDGES.

CAPERTON, JUDGE: The Appellant, Keath Bramblett, appeals the January 31, 2014, order of the Owen Circuit Court denying his Kentucky Rules of Civil Procedure (CR) 60.02 motion for relief. Bramblett was convicted of murder, tampering with physical evidence and persistent felony offender (PFO) second degree in 2001, for which he was sentenced to forty years' imprisonment. Twelve

years after his conviction, Bramblett filed a CR 60.02 motion, which was denied by the court below, and which Bramblett now appeals. Upon review of the record, the arguments of the parties, and the applicable law, we affirm.

On November 14, 2000, Bramblett was indicted for failure to comply with the sex offender registry, and PFO first degree. Thereafter, on April 10, 2001, he was indicted for murder, tampering with physical evidence, and PFO second degree. Bramblett entered into a plea agreement with the Commonwealth, in which he agreed to plead guilty to murder, tampering with physical evidence, and PFO second degree. As part of the plea agreement, the Commonwealth agreed to dismiss the failure to comply with sex offender registry and PFO first degree charges. On September 25, 2001, Bramblett was sentenced to forty years' imprisonment in accordance with his plea.

Approximately five years later, on September 13, 2006, Bramblett filed a Kentucky Rules of Criminal Procedure (RCr) 11.42 motion. On November 1, 2006, the trial court denied that motion as untimely. This Court affirmed the decision of the trial court on May 16, 2008. Five years thereafter, on November 15, 2013, Bramblett filed a CR 60.02 motion, which was denied by the trial court on January 31, 2014. It is from this denial that Bramblett now appeals.

Prior to reviewing the arguments of the parties on this issue, we note that we review a trial court's denial of a CR 60.02 motion for abuse of discretion. *Brown v. Commonwealth*, 932 S.W.2d 359, 362 (Ky. 1996); *Gross v. Commonwealth*, 648 S.W.2d 853, 858 (Ky. 1983). The test for abuse of discretion

is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles. *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

On appeal, Bramblett argues that the court below did not have jurisdiction over the sex offender registry charge which he asserts was more accurately classified as a misdemeanor. He also argues fraud affecting the proceedings pursuant to CR 60.02(d), as to the dismissed indictment for failure to register as a sex offender.

In response, the Commonwealth asserts that the trial court's ruling on Bramblett's CR 60.02 motion was correct, and should be affirmed. Upon review of the record, the arguments of the parties, and the applicable law, we agree.

Our review of the records reveals that Bramblett failed to raise the arguments which he asserts in his CR 60.02 motion in his initial RCr 11.42 motion. As our courts have previously held, failure to raise an issue which could and should have been raised either on direct appeal or via a RCr 11.42 motion cannot be raised for the first time in a CR 60.02 motion. *McQueen v. Commonwealth*, 948 S.W.2d 415, 416 (Ky. 1997), *Perkins v. Commonwealth*, 382 S.W.2d 393, 394 (Ky. App. 1964). Moreover, we note that Bramblett's constitutional claims are related to charges which were ultimately dismissed. Accordingly, we find no merit to his allegations of *ex post facto* error.

Finally, we note that Bramblett waited approximately twelve years following his conviction before filing his CR 60.02 motion. We note that CR 60.02 states:

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; (b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59.02; (c) perjury or falsified evidence; (d) fraud affecting the proceedings, other than perjury or falsified evidence; (e) the judgment is void, or has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (f) any other reason of an extraordinary nature justifying relief. 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.

CR 60.02 clearly provides that such motions must be filed within a reasonable time. We are in agreement with the court below that Bramblett's motion was not filed within a reasonable time, and find nothing in the record to indicate any newly discovered evidence which would have justified such a delay. Accordingly, we affirm.

Wherefore, for the foregoing reasons, we hereby affirm the January 31, 2014, order of the Owen Circuit Court denying Bramblett's CR 60.02 motion.

ALL CONCUR.

BRIEF FOR APPELLANT:

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