

RENDERED: SEPTEMBER 11, 2015; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2013-CA-000244-MR

AND

NO. 2013-CA-002011-MR

ROBERT LEROY FRANCIS II

APPELLANT

v. APPEAL FROM CLARK CIRCUIT COURT  
HONORABLE JEAN CHENAULT LOGUE, JUDGE  
ACTION NOS. 89-CR-00025 AND 89-CR-00033

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING APPEAL NOS. 2013-CA-00244-MR  
AND 2013-CA-002011-MR

\*\* \*\* \* \* \* \* \*

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

TAYLOR, JUDGE: Robert LeRoy Francis II, *pro se*, brings Appeal No. 2013-CA-00244-MR from a January 30, 2012, order and Appeal No. 2013-CA-002011-MR from a November 6, 2013, order of the Clark Circuit Court denying his

motions for post-conviction relief. We affirm Appeal No. 2013-CA-000244-MR and Appeal No. 2013-CA-002011-MR.

By judgment and sentence of imprisonment entered June 25, 1990, Francis was convicted of the offenses of murder, first-degree robbery, and conspiracy to commit first-degree robbery. He was sentenced to life imprisonment without parole for twenty-five years upon the murder charge, twenty-years' imprisonment upon the robbery charge and five-years' imprisonment upon the conspiracy to commit robbery charge. The sentences were ordered to run consecutively. Upon direct appeal to the Kentucky Supreme Court (Appeal No. 1990-SC-000600), Francis' conviction was affirmed, but his sentences of imprisonment were ordered to run concurrently, rather than consecutively.

Over the next several years, Francis filed a plethora of post-conviction motions. Relevant to the case *sub judice*, on May 3, 1994, Francis filed a Motion to Vacate Judgment Pursuant to Kentucky Rules of Criminal Procedure (RCr) 11.42 and RCr 10.26. Thereafter, Francis filed a Motion to Dismiss on June 17, 1994. By order entered July 26, 1994,<sup>1</sup> the circuit court granted Francis' motion and dismissed with prejudice the Motion to Vacate Judgment Pursuant to RCr 11.42 and RCr 10.26. Then, on October 19, 1994, Francis filed a Notice of Appeal from the July 26, 1994, order. The Court of Appeals ultimately dismissed Francis' appeal (Appeal No. 1994-CA-002547-MR) as untimely.

---

<sup>1</sup> An order identical to the July 26, 1994, order was entered July 28, 1994.

On September 21, 1994, Francis filed a Motion Pursuant to Kentucky Rules of Civil Procedure (CR) 60.02(e) and (f) in the circuit court. And, on January 19, 2000, Francis filed a Motion to Vacate Unlawful Judgment. Thereafter, Francis filed a supplement to the CR 60.02 motion. The circuit court denied the CR 60.02, motion, and the Court of Appeals affirmed the denial by Opinion rendered July 30, 2004 (Appeal No. 2003-CA-001579-MR).

On December 14, 2009, Francis filed a Motion to Reinstate Movant's RCr 11.42 Motion. By order entered January 30, 2012, the circuit court denied the motion. Francis timely filed a Notice of Appeal (Appeal No. 2013-CA-000244-MR) from that order.

During the pendency of Appeal No. 2013-CA-000244-MR, Francis filed in the circuit court Movant's Supplement to CR 60.01, CR 60.02, and CR 60.03 Motion. In the motion, Francis claimed the Commonwealth failed to produce the autopsy report of the victim, which allegedly constituted exculpatory evidence. By order entered November 6, 2013, the circuit court denied Francis' motion. Francis timely filed a Notice of Appeal from that order (Appeal No. 2013-CA-002011-MR). These appeals follow, and we will address each appeal seriatim.

Appeal No. 2013-CA-000244-MR

Francis contends that the circuit court erred by summarily denying his CR 60.02 motion to vacate his sentence of imprisonment. We disagree.

The circuit court determined that Francis' CR 60.02 motion was time-barred. The court specifically observed that "[a]pproximately nineteen (19) years have passed since the Kentucky Supreme Court affirmed [Francis'] conviction." In light thereof, the circuit court concluded that the CR 60.02 motion was not filed "within a reasonable time."

Under CR 60.02, the most liberal time period for filing a motion thereunder is within a reasonable time after entry of the underlying sentence of imprisonment. And, what constitutes a reasonable time lies within the discretion of the circuit court. *Gross v. Com.*, 648 S.W.2d 853 (Ky. 1983). Considering Francis' contention in his present CR 60.02 motion, the previous CR 60.02 motion filed by Francis, and the passage of some nineteen years since finality of his sentence of imprisonment, we cannot say that the circuit court abused its discretion by concluding that Francis' CR 60.02 motion was time-barred. *See Morris v. Thomas*, 330 S.W.2d 591 (Ky. 1960). We, thus, believe the circuit court properly denied Francis' CR 60.02 motion.

Appeal No. 2013-CA-002011-MR

As to Francis' RCr 11.42 motion, the circuit court summarily denied the motion as being a successive motion under RCr 11.42 and, therefore, barred. The record indicates that Francis filed an RCr 11.42 motion on May 3, 1994, and

by orders entered July 26, 1994, and July 28, 1994, the circuit court dismissed the RCr 11.42 motion “with prejudice.”

Our Supreme Court has held that “[f]inal disposition of that [RCr 11.42] motion, or waiver of the opportunity to make it, shall conclude all issues that reasonably could have been presented in that proceeding.” *Gross v. Com.*, 648 S.W.2d 853, 857 (Ky. 1983). When Francis voluntarily dismissed his RCr 11.42 in 1999, he effectively waived the opportunity to present issues under RCr 11.42; consequently, the circuit court properly denied his current RCr 11.42 motion. Thus, we conclude that the circuit court did not err by denying Francis’ RCr 11.42 motion.

For the foregoing reasons, we affirm Appeal No. 2013-CA-000244-MR and Appeal No. 2013-CA-002011-MR.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Robert LeRoy Francis II, *Pro Se*  
LaGrange, Kentucky

BRIEFS FOR APPELLEE:

Jack Conway  
Attorney General of Kentucky

W. Bryan Jones  
Bryan D. Morrow  
Assistant Attorney General  
Frankfort, Kentucky