

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

NO. 2013-CA-001910-MR

DAVID BRENT HAMILTON

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE OLU A. STEVENS, JUDGE  
ACTION NO. 04-CR-002544

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: MAZE, THOMPSON, AND VANMETER, JUDGES.

VANMETER, JUDGE: In 2006, a Jefferson County jury convicted David Hamilton of robbery in the first degree, assault in the first degree and persistent felony offender in the first degree. Hamilton received a 70-year sentence. On direct appeal, the Kentucky Supreme Court affirmed this judgment.<sup>1</sup> The issue presented now is whether the Jefferson Circuit Court properly denied Hamilton's

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<sup>1</sup> *Hamilton v. Commonwealth*, 2006-SC-000864-MR, 2007 WL 3226196 (Ky., Nov. 1, 2007).

CR<sup>2</sup> 60.02 post-conviction motion to vacate his convictions based on allegations relating to his competency to stand trial. Finding no abuse of discretion, we affirm.

After Hamilton's arraignment in September 2004, Hamilton's counsel requested a competency evaluation, pursuant to KRS<sup>3</sup> 504.100, at the Kentucky Correctional Psychiatric Center (KCPC). The trial court granted the motion. Hamilton's competency hearing was to be held on May 18, 2005, but at that hearing, his trial counsel stipulated to the KCPC's finding of competency. Hamilton did not challenge that finding on direct appeal or otherwise until 2013 when he filed a CR 60.02 motion to set aside his convictions on grounds that he was denied due process of law because his competency hearing was defective. The trial court denied his CR 60.02 motion on procedural grounds, finding that Hamilton failed to challenge the competency finding on direct appeal or in an RCr<sup>4</sup> 11.42 motion, and therefore was barred from challenging it via CR 60.02. Hamilton now appeals *pro se*.

This court reviews the denial of a CR 60.02 motion under an abuse of discretion standard. *Brown v. Commonwealth*, 932 S.W.2d 359, 362 (Ky. 1996); *White v. Commonwealth*, 32 S.W.3d 83, 86 (Ky. App. 2000). "An abuse of discretion occurs if the trial court's decision was 'arbitrary, unreasonable, unfair, or unsupported by sound legal principles.'" *Soileau v. Bowman*, 382 S.W.3d 888,

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<sup>2</sup> Kentucky Rules of Civil Procedure.

<sup>3</sup> Kentucky Revised Statutes.

<sup>4</sup> Kentucky Rules of Criminal Procedure.

890 (Ky. App. 2012) (quoting *Miller v. Eldridge*, 146 S.W.3d 909, 914 (Ky. 2004)).

Hamilton argues that his convictions should be set aside under CR 60.02 since he was denied due process of law when his counsel stipulated to the KCPC's finding of competency that Hamilton could properly function and assist in his defense during the trial. Hamilton also claims that the court failed to consider his need for medication and did not submit this to the jury so that it might weigh the effect Hamilton's lack of medication might have on his ability to properly function, communicate and assist in his trial.

Procedurally,

The structure provided in Kentucky for attacking the final judgment of a trial court in a criminal case 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. CR 60.02 is not intended merely as an additional opportunity to raise *Boykin* defenses. It is for relief that is not available by direct appeal and not available under RCr 11.42. The movant must demonstrate why he is entitled to this special, extraordinary relief. Before the movant is entitled to an evidentiary hearing, he must affirmatively allege facts which, if true, justify vacating the judgment and further allege special circumstances that justify CR 60.02 relief.

*Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983).

A convicted defendant is barred from collaterally attacking issues which could and should have been raised on direct appeal. *Leonard v. Commonwealth*, 279 S.W.3d 151, 158 (Ky. 2009). Hamilton's challenge to the court's competency

finding and decision not to conduct a competency hearing should have been raised on direct appeal. *See Howard v. Commonwealth*, 364 S.W.2d 809 (Ky. 1963) (stating “errors occurring during the trial should be corrected on direct appeal, and the grounds set forth under the various subsections of CR 60.02 deal with extraordinary situations which do not as a rule appear during the progress of a trial[]”). Hamilton’s failure to present these issues on direct appeal precludes him from asserting them now under CR 60.02.

That being said, his claims fail on a substantive basis as well. A competency hearing can be waived, or simply not conducted (in the court’s discretion), when the record contains no substantial evidence of incompetency. *Padgett v. Commonwealth*, 312 S.W.3d 336, 349 (Ky. 2010). In this case, following the KCPC’s evaluation of Hamilton and its finding of competency, his counsel stipulated to Hamilton’s competency to stand trial. Thus, a competency hearing was unnecessary. *See Mullins v. Commonwealth*, 454 S.W.2d 689, 690-91 (Ky. 1970) (holding that defendant’s claim of entitlement to a competency hearing prior to trial was meritless since he “had been certified by medical experts as being mentally competent to stand trial[]”). Furthermore, Hamilton’s claimed error on the part of his counsel by failing to consult with him prior to stipulating to his competency calls into question the effectiveness of counsel, and should have been raised in an RCr 11.42 motion.

With respect to Hamilton’s assertion that the court failed to consider the effects of him not being on medication and instructing the jury accordingly, the

determination of competency is one for the trial court, not for the jury. KRS 504.100(3); *Vincent v. Commonwealth*, 394 S.W.2d 929, 929 (Ky. 1965). *See also Commonwealth v. Strickland*, 375 S.W.2d 701, 703 (Ky. 1964) (stating “the test is whether [the defendant] has substantial capacity to comprehend the nature and consequences of the proceeding pending against him and to participate rationally in his defense. . . . It is not necessary that this determination be made by a jury[ ]”). Thus, the trial court had the prerogative to assess the effect, if any, medication had on Hamilton’s competency and properly did so in this case.

For the foregoing reasons, the Jefferson Circuit Court’s order denying Hamilton’s motion for CR 60.02 relief is affirmed.

ALL CONCUR.

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