

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000640-MR

CARLA SUE CRIDER

APPELLANT

v. APPEAL FROM BELL CIRCUIT COURT
HONORABLE ROBERT V. COSTANZO, JUDGE
ACTION NO. 95-CR-00097

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JONES, J. LAMBERT, AND MAZE, JUDGES.

J. LAMBERT, JUDGE: Carla Sue Crider, proceeding *pro se*, has appealed from the order of the Bell Circuit Court denying her motion for sentence modification pursuant to Kentucky Rules of Civil Procedure (CR) 60.02(f), following her convictions for murder and first-degree robbery. Finding no abuse of discretion, we affirm the order on appeal.

Along with co-defendant Daniel Lee Cornett, Crider was indicted by the Bell County grand jury for the August 1995 murder of 77-year-old John B. Davis and for first-degree robbery of the victim at his residence in Middlesboro, Kentucky. The victim died by asphyxiation through the use of a gag, duct tape, and a pillow case. Crider and Cornett stole \$17.00 in cash, a watch from the victim's arm, a 2-carat diamond ring from his hand, and a pistol. The Commonwealth notified the defendants that it intended to seek the imposition of the death penalty due to aggravating circumstances, as Mr. Davis had been murdered during the commission of first-degree robbery.¹

Shortly after the indictment was returned in September 1995, the trial court ordered a psychiatric evaluation at Kentucky Correctional Psychiatric Center (KCPC) in LaGrange, Kentucky, to determine Crider's mental state at the time of the crime and whether she was competent to stand trial. In September 1998, the trial court entered a subsequent order committing Crider to KCPC for examination and treatment. Letters from medical providers established that Crider was depressed and anxious, and that she may have suicidal tendencies. A letter from a nurse who saw Crider stated that she had been having a hard time dealing with the

¹ The record reflects that at the time of their arrest on August 23, 1995, Crider and Cornett were in an automobile registered to Brady Bartlett, a marine who had been reported missing the previous day. Cornett was wearing a shirt Mr. Bartlett had owned. Mr. Bartlett's body was found near a park off of Interstate 75 near Jellico, Tennessee, the next day. He had been robbed and murdered. In 1998, the State of Tennessee sought to extradite Crider on charges of first-degree murder (felony murder), first-degree murder (premeditation), especially aggravated kidnapping, and especially aggravated robbery. Governor Paul Patton granted extradition in December 1998. Crider pled guilty to especially aggravated robbery in January 2000 and received a twenty-five year sentence.

death of her father, who had overdosed. The record does not contain any documentation of the KCPC evaluations.

In January 2000, Crider moved to enter a guilty plea pursuant to the Commonwealth's offer. In exchange for pleading guilty as charged in the indictment, the Commonwealth recommended a sentence of life without parole for twenty-five years on the murder charge and twenty years for the robbery charge, to run concurrently with each other. The trial court accepted Crider's plea and scheduled a sentencing hearing. On January 20, 2000, the trial court entered a judgment sentencing her pursuant to the Commonwealth's recommendation.

By order entered in April 2001, the trial court credited Crider with an additional 436 days of jail time credit, in addition to the 834 days of credit she received in the final judgment. Based on the Commonwealth's response, the court did not credit her with 342 days of credit from a sentence she received in Pulaski County for burglary. More than nine years later, on May 27, 2009, Crider filed a *pro se* motion regarding jail time credit pursuant to Kentucky Revised Statutes (KRS) 532.120(3). She was seeking an additional 342 days of jail time credit. The trial court denied Crider's motion by order entered the following month, reasoning that Crider was seeking relief pursuant to CR 60.02(a) and that her motion was untimely, as it was filed more than nine years after the judgment was entered. The trial court also found that the alleged mistake in jail time credit did not constitute an extraordinary reason justifying relief under CR 60.02(f). While Crider filed a

notice of appeal to this Court (No. 2009-CA-001271-MR), the appeal was dismissed upon her own motion in January 2010.

On September 19, 2013, nearly four years after her appeal was dismissed and more than thirteen years after the final judgment was entered, Crider filed a *pro se* motion for sentence modification pursuant to CR 60.02(f). She asked that the trial court amend her “excessive” life sentence to a twenty-five-year sentence, to be served at 85%. In support of her motion, Crider cited to her mental health issues and to what she described as her changed circumstances. For the first basis, Crider cited results from a 1995 competency evaluation at KCPC by Dr. Yunker and a 1999 mental health evaluation by Dr. Eric Engum in Tennessee. Based upon those results, Crider posed the question, “Is it not clear to the Honorable Court that at the time the Movant committed said crimes, she could not have possibly been held accountable for her actions? It is obvious by her medical [examinations] alone, that she is not responsible for her actions and does not hold the thought process of an adequately proper [sic] functioning adult.” For the second basis, Crider stated “that at some point, prison time stops becoming rehabilitative and then remains to be only punitive.” She said her circumstances had changed since the time of her incarceration and that she was “not the same individual she was when she committed this offense.” She also alleged that she had “maintained clear conduct,” had completed several classes, and was enrolled in GED classes. By separate motions, Crider moved for appointment of counsel, to proceed *in forma pauperis*, and to transport her for hearings.

The trial court denied Crider's motion by order entered March 7,

2014. The court stated in relevant part as follows:

CR 60.02(f) is a residuary provision for relief from a judgment in cases of an extraordinary nature. However, the sentence imposed on the Defendant was legally imposed; and the mere passage of time, and the changed condition of the defendant, are not reasons of an extraordinary nature as contemplated by the rule. *McQueen v. Commonwealth*, 948 S.W.2d 415, 418 (Ky. 1997). As the Supreme Court has pointed out, such arguments are better addressed in a plea to the Governor for clemency. *Id.* The Court is without authority to rewrite the Defendant's lawfully-imposed sentence under CR 60.02.

The trial court also denied Crider's other pending motions. This appeal now follows.

CR 60.02 provides that a court may grant a party relief from a final judgment upon one of 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.

A CR 60.02 motion “shall be made within a reasonable time,” and the motion must be made “not more than one year after the judgment” for grounds (a), (b), and (c).

Id. Under CR 60.02(f), “a judgment may be set aside for a reason of an extraordinary nature justifying relief from the operation of the judgment.

However, because of the desirability of according finality to judgments, this clause must be invoked only with extreme caution, and only under most unusual circumstances.” *Cawood v. Cawood*, 329 S.W.2d 569, 571 (Ky. 1959). “The standard of review of an appeal involving a CR 60.02 motion is whether the trial court abused its discretion. For a trial court to have abused its discretion, its decision must have been arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Grundy v. Commonwealth*, 400 S.W.3d 752, 754 (Ky. App. 2013) (internal citations omitted). With this standard in mind, we shall review Crider’s argument.

In her brief, Crider limits her argument to whether her mental health issues support modification of her sentence, effectively abandoning her changed circumstances argument. Crider references the results of her mental health evaluations by Dr. Yunker and Dr. Engum to argue that she had been acting under an extreme emotional disturbance and was not responsible for her conduct due to her mental illness. Crider specifically states that she was not seeking to have her conviction overturned, but rather was seeking only a sentence modification.

First, we agree with the Commonwealth's argument that Crider's motion for CR 60.02 relief was not timely filed. CR 60.02 states that a motion made under subsection (f) "shall be made within a reasonable time[.]" As this Court stated in *Graves v. Commonwealth*, 283 S.W.3d 252, 257 (Ky. App. 2009), "[a] motion made pursuant to CR 60.02(f) must be brought within a 'reasonable time' and will be granted only when there are 'extraordinary circumstances justifying relief.' *Reyna v. Commonwealth*, 217 S.W.3d 274, 276 (Ky. App. 2007)." In those cases, this Court held that an unexplained delay in excess of seven years (*Graves*) and a four-year delay (*Reyna*) were unreasonable.

In the present case, the trial court sentenced Crider on January 20, 2000. Crider did not seek modification of her sentence on the basis of her mental health issues until September 19, 2013, almost fourteen years later. She did not offer any explanation for the delay in seeking relief, and therefore we must hold that her CR 60.02(f) motion was not timely filed. While the trial court addressed the merits of her motion, "an appellate court may affirm a lower court for any reason supported by the record." *McCloud v. Commonwealth*, 286 S.W.3d 780, 786 n.19 (Ky. 2009). Accordingly, we hold that the trial court's order denying Crider's motion did not constitute an abuse of discretion.

Even if we were to consider the merits of Crider's claim, we agree with the trial court and the Commonwealth that her motion lacked merit and she failed to establish a "reason of an extraordinary nature justifying relief." CR

60.02(f). First, Crider did not support her mental health claims with any evidence of record.

[A] CR 60.02 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)].

McQueen v. Commonwealth, 948 S.W.2d 415, 416 (Ky. 1997). The reports of her mental health evaluations do not appear in the record and therefore cannot support her argument. Second, Crider waived any defenses she might have had, including insanity and extreme emotional disturbance, by pleading guilty to the charges. It is well settled that “the effect of a plea of guilty is to waive all defenses other than that the indictment charges no offense.” *Quarles v. Commonwealth*, 456 S.W.2d 693, 694 (Ky. 1970).

Finally, we agree with the Commonwealth that her life sentence was not excessive, as Crider contends. As the Commonwealth stated in its brief,

[I]t should again be emphasized that [Crider] brutally murdered a 77-year old man in his own home during the course of robbing him. The record indicates that Mr. Davis was bound and gagged with duct tape, after which a pillow case was placed over his head and duct taped around his head to make it airtight. In exchange for avoiding the possibility of the death penalty, [Crider] pleaded guilty. Her life sentence was not “excessive,” it was bargained for. And, it was clearly justified given the horrific circumstances.

For the foregoing reasons, the order of the Bell Circuit Court denying Crider's motion for CR 60.02(f) relief is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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