

RENDERED: AUGUST 7, 2015; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2014-CA-001005-MR

AARON L. RUFFIN

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE JAMES D. ISHMAEL, JR., JUDGE  
ACTION NO. 99-CR-01060

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CLAYTON, D. LAMBERT, AND J. LAMBERT, JUDGES.

CLAYTON, JUDGE: Aaron L. Ruffin, *pro se*, appeals the order of the Fayette Circuit Court which denied his motion for relief pursuant to Kentucky Rules of Civil Procedure (CR) 60.02. For the reasons explained below, we affirm the decision of the trial court.

## Background

Ruffin entered a guilty plea on October 22, 1999, to the charges of Assault in the First Degree, Robbery in the First Degree, and Assault in the Third Degree. The Fayette Circuit Court entered judgment on November 24, 1999, but the trial court *sua sponte* amended the judgment because the original judgment erroneously listed the crimes to which Ruffin pled guilty. The amended judgment was entered on January 18, 2000. Ruffin was sentenced to thirty (30) years in prison.

Ruffin filed his first CR 11.42 motion on January 5, 2001. Later, he moved to dismiss it. The trial court granted the motion to dismiss on May 16, 2001. Ruffin then filed a second CR 11.42 motion. Counsel was appointed and filed a supplemental brief in support of the motion.

In this motion, Ruffin argued that he was subject to double jeopardy when his trial counsel advised him to plead guilty to both Assault in the First Degree and Robbery in the First Degree. Ruffin alleges that his counsel failed to cite *O'Hara v. Commonwealth*, 781 S.W.2d 514 (Ky. 1989), in support of the double jeopardy argument. The trial court distinguished *O'Hara* and denied the motion. Ruffin appealed to this Court. We affirmed the trial court in an opinion which was final on February 26, 2004. Ruffin filed a third CR 11.42 motion on March 14, 2006. That motion was denied on that same date.

Ruffin, again proceeding *pro se*, filed his first CR 60.02 motion on January 26, 2004. He also sought relief pursuant to Kentucky Rules of Criminal

Procedure (RCr) 8.08 and 10.26. The trial court denied this motion for relief on January 26, 2005, as well as Ruffin's motion to reconsider. Ruffin filed a motion for relief pursuant to CR 60.02(f) on March 14, 2006. The trial court denied that motion on March 22, 2006. On March 30, 2007, Ruffin filed a third motion pursuant to CR 60.02. This time Ruffin argued that CR 60.02(e) was a basis for relief. The trial court denied this motion on April 3, 2007. Ruffin appealed again to this Court. We affirmed the trial court by opinion entered on January 11, 2008.

Ruffin filed two other motions with the trial court which are not before us in this appeal. Ruffin filed his fourth motion pursuant to CR 60.02 on May 30, 2014. He again argued that he was subject to double jeopardy. He also argued that RCr 10.26 afforded him relief. On June 4, 2014, the trial court denied this motion as both being without merit and untimely. Ruffin has again appealed to this Court.

### **Analysis**

The standard of review in considering a trial court's denial of a CR 60.02 motion is whether the trial court abused its discretion. "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). Further, CR 60.02 is an extraordinary remedy. "A criminal judgment may be set aside only in extraordinary and emergency cases where the showing made is of such a conclusive character as to indicate the verdict most probably would not have been rendered and there is a strong probability of a

miscarriage of justice.” *Harris v. Commonwealth*, 296 S.W.2d 700, 702 (Ky. 1956).

In *Gross v. Commonwealth*, 648 S.W.2d 853 (Ky. 1983), the Kentucky Supreme Court analyzed CR 60.02. The Court in *Gross* stated:

CR 60.02 limits relief in these particulars:

1) The first three grounds specified in the rule [(a) mistake, inadvertence, surprise or excusable neglect, (b) newly discovered evidence, (c) perjury] are limited to application for relief “not more than one year after the judgment.”

2) The additional specified grounds for relief are (a) fraud, (b) the judgment is void, vacated in another case, satisfied and released, or otherwise no longer equitable, or (c) other reasons of an “extraordinary nature” justifying relief. These grounds are specific and explicit. Claims alleging that convictions were obtained in violation of constitutionally protected rights do not fit any of these grounds except the last one, “any other reason of an extraordinary nature justifying relief....”

3) CR 60.02 relief is discretionary. The rule provides that the court “*may*, upon such terms as are just, relieve a party from its final judgment ...” (emphasis added).

4) CR 60.02 further provides, as a threshold to relief that “the motion shall be made within a reasonable time....”

*Id.* at 857.

Further in *Baze v. Commonwealth*, 276 S.W.3d 761,766 (Ky. 2008), the Kentucky Supreme Court held that:

In our denial of Appellant's second CR 60.02 motion, we cautioned that CR 60.02 “was never meant to be used as another vehicle to revisit issues that should have been

included or could have been included in prior requests for relief.” *Baze v. Commonwealth*, No. 2005-SC-000889-MR, 2006 WL 1360281 (May 18, 2006). We further stated that this Court has attempted to make abundantly clear through our decisions that CR 60.02 and RCr 11.42 motions are not to be used to relitigate previously determined issues. *Id.*

In the case at bar, Ruffin has filed three previous CR 60.02 motions.

The issue of double jeopardy was addressed by this Court in its 2004 Opinion. Therefore, RCr 10.26 which allows for review based upon “[a] palpable error which affects the substantial rights of a party may be considered by the court on motion for a new trial or by an appellate court on appeal,…” is not a remedy available to Ruffin. The Amended Judgment was entered in 2000. Thus, the current motion is not timely, has been previously addressed by the Court, and is without merit. The judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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