

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2014-CA-001022-MR

WILLIAM A. YEAGLE

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT  
HONORABLE JOSEPH CASTLEN, III, JUDGE  
ACTION NO. 05-CR-00447

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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

BEFORE: MAZE, STUMBO AND TAYLOR, JUDGES.

STUMBO, JUDGE: William Yeagle appeals the order of the Daviess Circuit Court denying his motion to vacate the judgment based on Kentucky Rules of Civil Procedure (CR) 60.02 and Kentucky Rules of Criminal Procedure (RCr) 11.42 as well as his motion to recuse. Finding no error, we affirm.

Yeagle was convicted in 2006 by a Daviess County jury for the murder of Carol Hamilton and sentenced to forty years in prison. His conviction and

sentence were affirmed on direct appeal by the Kentucky Supreme Court.<sup>1</sup> In 2009, Yeagle filed a motion for RCr 11.42 relief with the trial court which was denied, and that ruling was affirmed by this Court in 2010. Yeagle then filed a motion for a new trial pursuant to CR 60.02 and 60.03, which was also denied by the trial court. This Court affirmed that ruling in April of 2013.

In October of 2013, Yeagle again filed a motion in the Daviess Circuit Court asking for post-conviction relief under both CR 60.02 and RCr 11.42. Yeagle argued that the Commonwealth withheld the fact that several of the witnesses who testified against him at trial received plea bargains in exchange for their testimonies. After this motion was filed, Yeagle filed a motion to recuse with the trial court. He claimed that because the attorney who prosecuted Yeagle had become a circuit judge, the trial court judge would be biased. He also alleged bias on the basis that the judge who presided over the trial was the brother of the current judge presiding over the post-conviction motions. The trial court denied the motions, and this appeal followed.

### **I. Motion to Recuse**

Yeagle first argues that the trial court erred by overruling his motion to recuse. A court's ruling on a motion to recuse is reviewed on appeal under the abuse of discretion standard. *Hodge v. Commonwealth*, 68 S.W.3d 338, 345-46 (Ky. 2001). "The test for abuse of discretion is whether the trial judge's decision

---

<sup>1</sup> The Supreme Court's memorandum opinion provides a detailed recounting of the facts in this case. *See Yeagle v. Commonwealth*, 2007-SC-000106, 2008 WL 5051582, at \*1-2 (Ky. Nov. 26, 2008).

was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.”

*Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

Judge Joseph Castlen, who presided over Yeagle’s post-conviction motions, is the brother of Judge Thomas Castlen, who presided over the pre-trial and trial proceedings. Yeagle argues that Judge Joseph Castlen was required to recuse under Kentucky Revised Statutes (KRS) 26A.015(2)(d)<sup>2</sup> due to the nature of the familial relationship he has with the prior judge who presided over the trial. We disagree.

The relationship between the judges in this case does not fall within any of the enumerated categories of KRS 26A.015(2)(d). Yeagle cites the case of *Middle States Coal Co. v. Hicks*, 608 S.W.2d 56 (Ky. App. 1980), but the facts of that case are easily distinguished. In *Middle States Coal*, an attorney involved with the case was married to the sister of the trial judge. The Kentucky Court of Appeals found that although the attorney did not directly participate in the trial, he had acted as a lawyer in the proceeding, and the judge should have recused. Here, although Judge Thomas Castlen is related to the trial judge, he acted as the judge,

---

<sup>2</sup> Any justice or judge of the Court of Justice or master commissioner shall disqualify himself in any proceeding . . . [w]here he or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

1. Is a party to the proceeding, or an officer, director, or trustee of a party;
2. Is acting as a lawyer in the proceeding and the disqualification is not waived by stipulation of counsel in the proceeding filed therein;
3. Is known by the judge or master commissioner to have an interest that could be substantially affected by the outcome of the proceeding;
4. Is to the knowledge of the judge or master commissioner likely to be a material witness in the proceeding.

not a lawyer. The language of KRS 26A.015(2)(d) is specific and does not require recusal where a relative acted as a judge in the proceedings.

Yeagle also relies on KRS 26A.015(2)(e), which requires a judge to recuse “[w]here he has knowledge of any other circumstances in which his impartiality might reasonably be questioned.” This standard is also contained in SCR 4.300, Canon 3(E)(1). “The inquiry under Canon 3(E)(1) is an objective one, made from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances.” *Dean v. Bondurant*, 193 S.W.3d 744, 746 (Ky. 2006) (internal quotation marks and citation omitted). The burden of proof is onerous; an appellant must show “more than a party’s mere belief that the judge will not afford a fair and impartial trial.” *Minks v. Commonwealth*, 427 S.W.3d 802, 808 (Ky. 2014) (internal quotation marks and citation omitted).

Yeagle’s conclusion that the relationship between the judges creates an appearance of bias is unsupported. Yeagle does not allege any facts other than the familial relationship with the previous judge in the case. The existence of this relationship alone does not give rise to a circumstance in which the judge’s impartiality might reasonably be questioned.

Yeagle further argues that because the former prosecutor in the case is now a sitting judge in the county in which this case arose, the trial judge should recuse. Yeagle essentially claims that the working relationship between the two judges creates the appearance of bias, arguing that the former prosecutor might be required to testify at an evidentiary hearing and that the trial judge might be called

upon to rule against a person who is now a fellow judge. Again, Yeagle provides only conclusions and does not provide an adequate basis for his argument that the trial judge's impartiality might reasonably be questioned. That the former prosecutor now serves on the bench in the county in which the trial was held does not objectively demonstrate bias. Because the facts alleged by Yeagle do not establish the existence of a "circumstance[] in which [the judge's] impartiality might reasonably be questioned," KRS 26A.015(2)(e), the trial court did not abuse its discretion in overruling Yeagle's motion to recuse.

## **II. Motion for New Trial under RCr 11.42 and CR 60.02**

The Kentucky appellate structure for criminal cases requires "a defendant aggrieved by a judgment in a criminal case . . . to directly appeal that judgment, stating every ground of error which it is reasonable to expect that he or his counsel is aware of when the appeal is taken." *Gross v. Commonwealth*, 648 S.W.2d 853, 857 (Ky. 1983.) A defendant must next "avail himself of RCr 11.42 . . . as to any ground of which he is aware, or should be aware, during the period when this remedy is available to him." *Id.* CR 60.02 is reserved only for "relief that is not available by direct appeal and not available under RCr 11.42." *Gross*, 648 S.W.2d at 856.

Civil Rule 60.02 is not intended merely as an additional opportunity to relitigate the same issues which could "reasonably have been presented" by direct appeal or RCr 11.42 proceedings. The obvious purpose of this principle is to prevent the relitigation of issues which either were or could have been litigated in a similar proceeding. . . . CR 60.02 is not a separate avenue of

appeal to be pursued in addition to other remedies, but is available only to raise issues which cannot be raised in other proceedings.

*McQueen v. Commonwealth*, 948 S.W.2d 415, 416 (Ky. 1997) (citations omitted).

The rules governing post-conviction motions do not allow for successive motions. “Our case law has long held that we will not consider successive motions to vacate a conviction when those motions recite grounds for relief that have been or should have been raised earlier.” *Cardwell v.*

*Commonwealth*, 354 S.W.3d 582, 585 (Ky. App. 2011) (citation omitted).

Relief is not available under RCr 11.42 or CR 60.02 for the claims presented by Yeagle in this appeal. Yeagle has previously filed multiple post-conviction motions, and the motion that is the subject of the instant appeal is successive and will not be considered. Furthermore, Yeagle is unable to demonstrate that he was not aware of the issues raised here at the time of his direct appeal or his first RCr 11.42 motion. Yeagle argues that the Commonwealth withheld the fact that several of the witnesses who testified against him at trial received plea bargains in exchange for their testimonies. However, these witnesses testified at trial that they received plea agreements in exchange for their testimony. Because the motion was successive and it was reasonable to expect that Yeagle or his counsel should have been aware of the alleged error at the time of the direct appeal or the first RCr 11.42 motion, the trial court correctly denied Yeagle’s motion.

Based on the foregoing, the decision of the Daviess Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

William A. Yeagle, *Pro Se*  
West Liberty, Kentucky

BRIEF FOR APPELLEE:

Jack Conway  
Attorney General

Ken W. Riggs  
Assistant Attorney General  
Frankfort, Kentucky