

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

NO. 2014-CA-001203-MR

MARION EUGENE BUTLER

APPELLANT

v. APPEAL FROM JOHNSON CIRCUIT COURT  
HONORABLE JOHN DAVID PRESTON, JUDGE  
ACTION NO. 95-CR-00039

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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

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

D. LAMBERT, JUDGE: Marion Eugene Butler (Butler) appeals the July 7, 2014 order of the Johnson Circuit Court denying his post-conviction motions under Kentucky Rules of Criminal Procedure (RCr) 11.42 and Kentucky Rules of Civil Procedure (CR) 60.02. After review, we affirm.

Butler was convicted of murder, criminal attempt to commit first-degree manslaughter, first-degree wanton endangerment, and two counts of first-

degree burglary. He was sentenced to serve 95 years in prison for these crimes.

The Kentucky Supreme Court upheld Butler's sentence on direct appeal in *Butler v. Commonwealth*, 97–SC–148–MR (September 3, 1999) (unpublished). In that opinion, the Court provided the following recitation of facts, which we now adopt:

Appellant and Renee Fields lived together off and on for approximately two and one half years. After a violent argument on October 13, 1995, Appellant moved out of Fields's apartment. On the following day, Appellant visited an apartment occupied by a neighbor, Rebecca Dhell. When Fields arrived at Dhell's apartment, she offered to give Appellant a car if he would leave her alone. Appellant took the car and left.

On October 15, 1995, Appellant returned to the neighborhood and parked the car five or six blocks from Fields's apartment. By his own admission, he parked the car in that location so that Fields would not observe his approach and call the police. Fields's brother had barricaded the back door of her apartment by placing a table leaf under the door knob. Appellant forced open the door, proceeded through a hallway leading into the living room where Fields and Dhell were seated, pulled a gun out of his pocket, pointed it at Field's [sic] face, and began shooting. Dhell retreated to her own apartment. Fields, bleeding from wounds to the head ran to an apartment belonging to Wandalene Minix, where she encountered Minix's boyfriend, Ben Siders. Siders permitted Fields to enter the apartment, but refused entry to Appellant. Appellant kicked in the door, shot Siders twice, then shot Fields between the eyes, killing her instantly.

On December 21, 1999, Butler requested his trial transcript from the Johnson Circuit Court Clerk, but he did not bring a collateral challenge until 2013.

By this time, the trial court had already granted a motion from the Commonwealth to destroy the evidence in Butler's trial.<sup>1</sup>

On February 19, 2013, Butler filed his collateral challenge under RCr 11.42 and CR 60.02(e) and (f). Butler presented three arguments in favor of a new trial. Butler argued that the jury was given an improper instruction, that the murder instruction given to the jury was void, and that his alleged mental illness prevented him from presenting these claims at an earlier time. With respect to this third argument, Butler further claimed that the time it took to file a collateral attack should be equitably tolled.

In response, the Commonwealth asserted that equitable tolling should not save Butler's untimely claims. The Commonwealth also asserted, in the alternative, that Butler's claims were meritless. The trial court agreed with the Commonwealth's first assertion and determined the Butler's collateral challenge was not timely. This appeal followed.

A movant must file a motion under CR 60.02 "within a reasonable time" after a judgment becomes final. Moreover, a judgment becomes final on the date "the conclusive judgment in the case, whether it be the final judgment of the appellate court on direct appeal or the judgment of the trial court in the event no direct appeal was taken[,]" is entered. *Palmer v. Commonwealth*, 3 S.W.3d 763, 765 (Ky. App. 1999).

---

<sup>1</sup> The trial court granted this motion on June 4, 2010.

Under RCr 11.42, a movant must file a motion within three years from the day a judgment becomes final unless an exception applies. RCr 11.42(10).<sup>2</sup> Kentucky acknowledges that mental incompetence may toll the statute of limitations. *See Commonwealth v. Carneal*, 274 S.W.3d 420, 429 (Ky. 2008). However, “a claim of mental incompetence does not constitute a *per se* reason to toll a statute of limitations.” *Commonwealth v. Stacey*, 177 S.W.3d 813, 817 (Ky. 2005). Instead, the “critical inquiry remains whether the circumstances preventing a petitioner from making a timely filing were both beyond the petitioner's control and unavoidable despite due diligence.” *Carneal*, 274 S.W.3d at 429.

Here, pursuant to CR 76.30(2)(a),<sup>3</sup> Butler’s direct appeal became final on September 24, 1999. He thus had until September 24, 2002, to file his RCr 11.42 motion. Butler did not file his RCr 11.42 motion during this statutory, three-year window. Rather, he waited until 2013 to file a post-conviction motion of any kind. During that wait, Butler had time to request his trial transcript via *pro se* letter to the Johnson Circuit Court Clerk, and the trial court had the opportunity to

---

<sup>2</sup> The statutory exceptions to this rule are well-established and require the movant to show either:

- (a) that the facts upon which the claim is predicated were unknown to the movant and could not have been ascertained by the exercise of due diligence; or
- (b) that the fundamental constitutional right asserted was not established within the period provided for herein and has been held to apply retroactively.

RCr 11.42(10).

<sup>3</sup> CR 76.30(2)(a) provides, “An opinion of the Supreme Court becomes final on the 21st day after the date of its rendition unless a petition under Rule 76.32 has been timely filed or an extension of time has been granted for that purpose.”

evaluate and grant the Commonwealth's motion to destroy the evidence in Butler's trial. Though Butler claims his medication caused him not to be able to file a collateral challenge any earlier, this evidence demonstrates that he could have. Therefore, Butler was not prevented from making a timely filing because of any unavoidable circumstance beyond his control. His RCr 11.42 is untimely, and for the same reasons, the trial court did not abuse its discretion in determining that his CR 60.02 motion was also untimely. The decision of the Johnson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Marion Eugene Butler, *Pro se*  
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Jack Conway  
Attorney General of Kentucky

Christian K. R. Miller  
Assistant Attorney General  
Frankfort, Kentucky