

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-001621-MR

MARIO SIQUIN OXLAJ

APPELLANT

v. APPEAL FROM GRAVES CIRCUIT COURT
HONORABLE TIMOTHY C STARK, JUDGE
ACTION NO. 06-CR-00267

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: J. LAMBERT, TAYLOR, AND THOMPSON, JUDGES.

TAYLOR, JUDGE: Mario Siquin Oxlaj brings this *pro se* appeal from an August 15, 2014, order of the Graves Circuit Court amending an October 18, 2007, judgment upon guilty plea. We affirm.

In 2007, Louis Angel Carrera Quinonez pleaded guilty to murder, driving under the influence of intoxicants, and two counts of first-degree assault.

By judgment entered October 18, 2007, Quinonez was sentenced to a total of twenty years' imprisonment.

Some six years later, on November 20, 2013, the Commonwealth filed a Motion to Amend Judgment and Sentence. In the motion to amend, the Commonwealth asserted:

The Kentucky State Police received a report of stolen identity from Luis Angel Quinonez, a resident of Minnesota. Upon investigation, the Defendant convicted herein admitted that he had purchased the identification from another individual when the Defendant came into the United States of America from Mexico. The Defendant's true name is MARIO SIQUIN OXLAJ.

The Commonwealth sought to amend the October 18, 2007, judgment to reflect that the defendant's correct name was Mario Siquin Oxlaj.

After conducting a hearing upon the Commonwealth's motion to amend, the circuit court rendered an order amending the October 18, 2007, judgment. In the August 15, 2014, order, the circuit court found that Oxlaj had committed fraud in the prior criminal proceedings by misrepresenting his name to be Luis Angel Carrera Quinonez. In particular, the circuit court concluded:

The Court finds from the evidence there was a mistake in the entry of the Judgment and Sentence in these proceedings, on the part of the Court and its officers, and it appears by clear and convincing evidence that the Defendant fraudulently advised the Court and court officials of his name, although he may have recanted at the time of sentencing. There is no doubt that the Defendant, present in court, is the same individual who was sentenced before the Court in prior proceedings. But he was representing himself to have a different name. The Court, therefore, should amend the Indictment and

the Judgment and Sentence to reflect the true name of the Defendant.

This appeal follows.

Appellant contends that the circuit court erred by amending the October 12, 2007, judgment and the indictment. Appellant asserts that the circuit court lost jurisdiction to amend the October 18, 2007, judgment ten days after it was entered. By amending the October 18, 2007, judgment after ten days, appellant believes that the circuit court acted arbitrary and capricious.

It is true that the circuit court generally loses authority to amend an order or judgment after ten days from its entry. Kentucky Rules of Criminal Procedure (RCr) 1.10; RCr 13.04; Kentucky Rules of Civil Procedure (CR) 59.05; *McMurry v. Commonwealth*, 682 S.W.2d 794 (Ky. 1985). However, an order or judgment may be vacated or amended after ten days under CR 60.02.

CR 60.02 is an extraordinary remedy only available to prevent a miscarriage of justice. *Wilson v. Commonwealth*, 403 S.W.2d 710 (Ky. 1966). Under CR 60.02(d), a court may grant relief upon the ground of “fraud affecting the proceedings.” To constitute fraud affecting the proceedings, the fraud must have been practiced upon the court and must have attempted “to subvert the integrity of the court itself.” *Edwards v. Headcount Mgmt.*, 421 S.W.3d 403, 406 (Ky. 2014) (quoting *Goldsmith v. Fifth Third Bank*, 297 S.W.3d 898, 904 (Ky. App. 2009)). A motion under CR 60.02(d) must be filed within a reasonable time.

In this case, the circuit court found that appellant purchased the identity of Luis Angel Carrera Quinonez upon entering the country and that appellant misled the court during his criminal proceedings in 2007. It is patently clear that appellant committed fraud affecting his legal proceedings within the meaning of CR 60.02(d) by misrepresenting his true identity to the court. Corruption of the legal process cannot be condoned by the courts. Therefore, we do not believe the circuit court abused its discretion by amending the judgment to reflect appellant's actual name.¹

For the foregoing reasons, the Order of the Graves Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Luis Angel Carrera-Quinonez, *Pro Se*
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

Ken W. Riggs
Assistant Attorney General
Frankfort, Kentucky

¹ The Commonwealth argues that the circuit court properly amended the October 18, 2007, judgment under Kentucky Rules of Civil Procedure (CR) 10.10. CR 10.01 permits the circuit court to amend its order or judgment to correct a clerical error. However, “[r]endering a judgment based on incomplete or false information is not a clerical error.” *Viers v. Commonwealth*, 52 S.W.3d 527, 529 (Ky. 2010), *receded on other grounds by Winstead v. Commonwealth*, 327 S.W.3d 479 (Ky. 2010).