

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001941-MR

CHARLES MOSS

APPELLANT

APPEAL FROM BALLARD CIRCUIT COURT
v. HONORABLE CLARENCE A. WOODALL, III, JUDGE
ACTION NO. 01-CR-00066

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: CLAYTON, JONES, AND NICKELL, JUDGES.

JONES, JUDGE: Charles Moss (Moss) brings this *pro se* appeal from an order of the Ballard Circuit Court denying his request for post-conviction relief pursuant to CR¹ 60.02. After a careful review of the record and the applicable law, we affirm.

On September 21, 2001, a Ballard County grand jury indicted Moss on three counts of Use of a Minor in a Sexual Performance, pursuant to KRS²

¹ Kentucky Rules of Civil Procedure.

² Kentucky Revised Statutes.

531.310 (Class B felony); one count of First-Degree Unlawful Transaction with a Minor under Age 16, pursuant to KRS 530.064 (Class C felony); three counts of First-Degree Sexual Abuse, pursuant to KRS 510.110 (Class D felony); and two counts of First-Degree Criminal Abuse, pursuant to KRS 508.100 (Class C felony). All of the charges stemmed from events that took place during June, July, and August of 2001 while Moss was taking care of three children (a 7-year-old boy and two girls, aged 8 and 11) while their mother was out at work. Moss eventually pleaded guilty to all of the charges and was sentenced to a total of fifty-years' imprisonment by judgment entered June 7, 2002. Since that time, Moss has filed a litany of post-conviction motions, including an RCr³ 11.42 motion asserting ineffective assistance of counsel, which he litigated unsuccessfully through appeal,⁴ and three prior CR 60.02 motions.

On May 12, 2014, Moss filed the motion underlying this appeal. Again relying on CR 60.02, Moss sought relief from his conviction and sentence on the basis that: 1) he did not meet with his newly appointed counsel at sentencing; 2) the Commonwealth improperly reneged on its original 10-year plea agreement; 3) that his defense counsel misrepresented the amount of prison time he could potentially receive; and 4) his sentence for unlawful transaction with a minor in the first degree was excessive. On October 21, 2014, the circuit court denied

³ Kentucky Rules of Criminal Procedure.

⁴ *Moss v. Commonwealth*, No. 2006-CA-002096-MR, 2008 WL 344199, at *1 (Ky. App. 2008).

Moss's motion on the basis that it was untimely, successive, and did not raise any facts of an extraordinary nature. We agree.

Our appellate courts have long held that CR 60.02 is reserved for special cases. It is not designed to allow the movant to take a second bite at the apple. *Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky.1983).

CR 60.02 does not permit successive post-judgment motions, and the rule may be utilized only in extraordinary situations when relief is not available on direct appeal or under RCr 11.42. *McQueen v. Commonwealth*, 948 S.W.2d 415, 416 (Ky.1997). That is, CR 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 an RCr 11.42 proceeding. *Id.* Indeed, RCr 11.42(3) makes clear that the movant shall, in his RCr 11.42 petition, state all grounds for holding the sentence invalid of which the movant has knowledge. Thus, final disposition of a movant's RCr 11.42 motion shall conclude all issues which could reasonably have been presented in the same proceeding. *Gross*, 648 S.W.2d 853; see also *Shepherd v. Commonwealth*, 477 S.W.2d 798, 799 (Ky. 1972) ("this court will not review matters which have been or should have been raised and reviewed in prior motions to vacate."); *Gross*, 648 S.W.2d at 856 (CR 60.02 was never meant to be used as just another vehicle to revisit issues that should have been included or could have been included in prior requests for relief. Nor is it intended to be used as a method of gaining yet another chance to relitigate previously determined issues.).

Foley v. Commonwealth, 425 S.W.3d 880, 884 (Ky. 2014) (footnote omitted).

Moss has enthusiastically litigated his case for the past fourteen years. He has bombarded the circuit court with post-conviction motions. None of those motions has been found to have merit. Yet, the circuit court's denials have not

daunted Moss; he repackages the previously rejected arguments and files a new motion. Time and again, Moss has raised issue after issue, including some of the issues contained in the motion underlying this appeal. Additionally, none of the facts included in Moss's most recent motion are new. Moss could have, and did, litigate these issues years ago. Moss is out of bites; he has eaten his apple down to the core.

The Ballard Circuit Court properly rejected Moss's motion as both untimely and successive. Accordingly, we AFFIRM.

ALL CONCUR.

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