

RENDERED: SEPTEMBER 1, 2017; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2015-CA-000976-MR

JASON EMERY MEARS

APPELLANT

v. APPEAL FROM HARDIN CIRCUIT COURT  
HON. KELLY MARK EASTON, JUDGE  
INDICTMENT NOS. 13-CR-00655

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE, DIXON, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Jason Emery Mears appeals, *pro se*, from the Hardin Circuit Court's order denying relief pursuant to Kentucky Rules of Civil Procedure (CR) 60.02 entered April 21, 2015, and amended June 1, 2015. We affirm.

BACKGROUND

On February 4, 2014, Mears pleaded guilty in open court on charges of first-degree sexual abuse and third-degree sodomy for incidents involving a

fifteen-year-old girl. Pursuant to a plea negotiation with the Commonwealth, the circuit court sentenced Mears to a concurrent term of four-years' imprisonment with final judgment entered on May 14, 2014.

On March 17, 2015, the circuit judge received a *pro se* letter from Mears asserting that he had discovered a police report showing that the sister of his victim had recanted her statement implicating Mears, and that Mears was not aware of this exculpatory information when he elected to plead guilty. Mears also asserted that his attorney, Heather Strotman, had threatened him into taking the guilty plea, saying that if he did not take the plea, she would push for a maximum sentence against him.

The circuit court treated the letter as a motion and concluded it did not comply with the requirements of Kentucky Rules of Criminal Procedure (RCr) 11.42(2) and thus denied any relief on that basis.<sup>1</sup> However, the circuit court concluded that Mears had raised a cognizable claim under CR 60.02 and scheduled an evidentiary hearing to determine whether Mears was aware of his victim's sister's recanting of her statement to the police at the time of his guilty plea. A hearing was held April 20, 2015, and Mears was appointed counsel to represent him. His former attorney, Strotman, testified at the hearing, stating that the police report regarding the sister's recanting of her story was in the discovery file, and that Strotman had given the discovery to Mears. Strotman also testified that she

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<sup>1</sup> Kentucky Rules of Criminal Procedure 11.42(2) requires that "[t]he motion shall be signed and verified by the movant and shall state specifically the grounds on which the sentence is being challenged and the facts on which the movant relies in support of such grounds. Failure to comply with this section shall warrant a summary dismissal of the motion."

discussed this matter with Mears while preparing his defense. Further testimony from Strotman revealed that Mears was aware of the sister's recanting of the story, and that he evinced knowledge of it in letters that he sent to his victim.

The circuit court denied the CR 60.02 motion in a written order entered April 21, 2015, finding that Mears knew of the recantation and that Mears did not establish any extraordinary grounds for relief under CR 60.02.

Furthermore, the court concluded there were numerous incriminating admissions by Mears to police and through writings to the victim about his actions, thus limiting any value that Mears' defense would have received by impeaching the sister at trial. Pursuant to a CR 59 motion filed by Mears' appointed counsel, the court redacted portions of page 2 of the April 21, 2015, order finding that Strotman did not render ineffective assistance of counsel, by Order entered June 1, 2015.

This appeal follows.

### ANALYSIS

“[CR 60.02] is not intended as merely an additional opportunity to raise claims which could and should have been raised in prior proceedings, but, rather, ‘is for relief that is not available by direct appeal and not available under RCr 11.42.’” *Sanders v. Com.*, 339 S.W.3d 427, 437 (Ky. 2011) (quoting *Gross v. Com.*, 648 S.W.2d 853, 856 (Ky. 1983)). Mears presents four issues on appeal - however in all four of the issues, Mears invokes RCr 11.42 arguments instead of addressing the CR 60.02 issue upon which the circuit court conducted an evidentiary hearing. In fact, it is baffling that Mears specifically asked for the

circuit court to strip the RCr 11.42 references from its order, only to then attempt to argue RCr 11.42 issues on appeal.

As it stands, the issues presented by Mears in his brief look entirely to RCr 11.42 issues and not the CR 60.02 matter which is now on appeal. Accordingly, the arguments presented by Mears on appeal may not be considered by this Court, as he did not present them to the circuit court in a properly filed RCr 11.42 motion. In Kentucky, issues not raised before a trial court in a CR 60.02 proceeding are not subject to review and will not be considered on appeal. *Parker v. Com.*, 465 S.W.2d 280 (Ky. 1971). More colloquially, “[t]he appellants will not be permitted to feed one can of worms to the trial judge and another to the appellate court.” *Kennedy v. Com.*, 544 S.W.2d 219, 222 (Ky. 1976) (*overruled on other grounds by Wilburn v. Com.*, 312 S.W.3d 321 (Ky. 2010)).

#### CONCLUSION

For the foregoing reasons, we affirm the Hardin Circuit Court’s order denying relief pursuant to CR 60.02, entered April 21, 2015, and as amended June 1, 2015.

ALL CONCUR.

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