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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-000488-MR

RUBEN RIOS SALINAS

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JAMES D. ISHMAEL, JR., JUDGE
ACTION NO. 96-CR-00052

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: JONES, STUMBO, AND TAYLOR, JUDGES.

JONES, JUDGE: Acting without the assistance of counsel, the Appellant, Ruben Rios Salinas, appeals the Fayette Circuit Court's March 2, 2016, Order denying what Salinas styled as a motion to "Vacate and/or Extraordinary Writ." Finding no error, we affirm.

I. BACKGROUND

On January 23, 1996, Salinas was indicted for trafficking in marijuana over five pounds and endangering the welfare of a minor child. Salinas entered

into a plea agreement with the Commonwealth. Pursuant to the terms of the agreement, the Commonwealth dismissed the endangerment charge in return for Salinas's guilty plea on the trafficking charge. On March 13, 1996, in accordance with the plea agreement, Salinas was convicted of trafficking in marijuana over five pounds and sentenced to five years imprisonment, probated for five years. On January 10, 2000, Salinas's probation was revoked after he was convicted of murder and kidnapping in a separate case in 1999. *See Salinas v. Commonwealth*, 84 S.W.3d 913, 914-16 (Ky. 2002).¹

Salinas filed a CR² 60.02 motion challenging the 1996 conviction in March of 2003. The circuit court denied the motion. Salinas did not file a timely appeal, and his motion for permission to file a belated appeal was denied by this Court in February of 2004. The Kentucky Supreme Court denied discretionary review in June of 2004. Salinas did not take any further action until November of 2015, when he filed a second CR 60.02 motion. By order entered March 2, 2016, the trial court denied the motion, stating:

The Motion language is vague, confusing, and makes general accusations and conclusions without any citation to the Record. There is no explanation given why a conviction and sentence in a 1996 case should be

¹ Salinas' 1999 convictions were overturned by the Kentucky Supreme Court, in part, because the jury had not been properly instructed in the penalty phase on the capital kidnapping charge. *Id.* The Commonwealth retried Salinas, which resulted in convictions for manslaughter in the first degree, criminal attempt of theft by extortion, and persistent felony offender ("PFO") in the second degree. The 1996 conviction that Salinas is challenging as part of this appeal served as the predicate for the 2005 PFO II conviction.

² Kentucky Rules of Civil Procedure.

reviewed in 2016. The motion is untimely as a matter of law and sets out no basis for relief in any event.

The record reflects that the Defendant was graciously given the privilege of probation instead of a sentence in prison. He was on probation in this case when he was charged and later convicted of Murder and Kidnapping in the other cases referenced above. There are no grounds set out in his papers to challenge his Guilty Plea, Sentence of Probation, and Probation Revocation in this Court record.

This appeal followed.

II. ANALYSIS

Salinas is seeking relief from the 1996 conviction pursuant to CR

60.02. It provides:

On motion a court may, upon such terms as are just, relieve a party or his legal representative from its final judgment, order, or proceeding upon the following grounds: (a) mistake, inadvertence, surprise or excusable neglect; (b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59.02; (c) perjury or falsified evidence; (d) fraud affecting the proceedings, other than perjury or falsified evidence; (e) the judgment is void, or has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (f) any other reason of an extraordinary nature justifying relief. The motion shall be made within a reasonable time, and on grounds (a), (b), and (c) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this rule does not affect the finality of a judgment or suspend its operation.

CR 60.02.

Given that the convictions at issue were entered in 1996, relief under CR 60.02 (a), (b), or (c) is not available. This leaves us to consider CR 60.02 (e) and (f). Salinas does not put forth any facts to support application of subsection (e). Therefore, he is entitled to relief only there is some “reason of an extraordinary nature” to justify it. Salinas has failed to identify anything to support his vague and conclusory allegations that the 1996 conviction was the result of a faulty and unconstitutional process. More problematic, however, is that Salinas has not convincingly explained why he did not seek relief on these grounds earlier.

“A CR 60.02(f) motion must be made ‘within a reasonable time.’”

Foley v. Commonwealth, 425 S.W.3d 880, 884 (Ky. 2014) (quoting *Gross v. Commonwealth*, 648 S.W.2d 853, 858 (Ky. 1983)). Two decades is not a reasonable time. *Id.*; *see also, Oller v. Commonwealth*, 292 S.W.3d 332, 334 (Ky. App. 2009) (“Sixteen years is simply not a reasonable time.”). Accordingly, the trial court acted correctly in denying CR 60.02 relief to Salinas.

III. CONCLUSION

For the reasons set forth above, we affirm the Fayette Circuit Court.

ALL CONCUR.

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