

RENDERED: AUGUST 25, 2017; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2016-CA-000605-MR

RUBEN RIOS SALINAS

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE KIMBERLY N. BUNNELL, JUDGE  
ACTION NO. 03-CR-01296

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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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 7, 2016, Order denying what Salinas styled as a motion to "Vacate and/or Extraordinary Writ." Finding no error, we affirm.

### **I. Background**

Salinas is currently serving a life sentence following his 2005 convictions for manslaughter in the first degree, criminal attempt of theft by

extortion, and persistent felony offender (“PFO”) in the second degree.<sup>1</sup> The facts giving rise to Salinas’s 2005 convictions have previously been summarized by our Supreme Court as follows:

At about 3:00 p.m. on Thursday, September 10, 1998, Nuckolls [the alleged victim] told his wife, Gayle, that he was going to a pharmacy to refill his prescription medication. He drove away in his red 1988 Pontiac automobile and did not return. The next morning, Gayle Nuckolls found a note inside the front storm door of her home stating that her husband was “fine” and directing her to dial his pager number. She did so, and, when the call was returned, an unknown voice advised her that her husband had been in a “drug deal gone wrong,” that he was in serious trouble, and that she needed to get a lot of money together in order to save him. Mrs. Nuckolls advised the caller to “throw him off a cliff” and reported her husband's disappearance and the telephone call to the police. Mrs. Nuckolls explained that her unusual response to the caller was because her husband had previously been engaged in narcotics trafficking but had assured her that he was no longer involved in criminal activities. In fact, at the time of his disappearance, Nuckolls was under investigation for possible narcotics trafficking, gun smuggling, and counterfeiting. After his disappearance, police investigators found \$10,000.00 worth of marijuana in a rental storage facility controlled by Nuckolls and his wife.

Nuckolls's girlfriend, Nancy Burd, testified that Nuckolls called her home “800” number on September 10, 1998, to tell her that he was taking a trip to Ohio. At about 5:00 a.m. on Friday, September 11, 1998, Burd received a telephone call from an unknown person advising her that

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<sup>1</sup> The PFO II conviction had the effect of enhancing Salinas’s twenty-year sentence for manslaughter in the first degree to a life sentence. The predicate for the PFO II charge arose out of a conviction Salinas received in 1996 following a guilty plea. Salinas is challenging the 1996 conviction in a separate appeal that is also before this panel. *See Salinas v. Commonwealth*, Case No. 2015-CA-488.

Nuckolls had been in a “drug deal gone bad,” that he was in danger, and that she needed to send him \$20,000.00. Burd assumed the caller was talking about money for a bail bond. Three hours later, she received another telephone call from the same unknown person asking if she intended to “help Al.” She responded, “No, I am going to work,” which she did. Early Sunday morning, September 13, 1998, Burd received another telephone call from the same unknown person advising her that Nuckolls had been kidnapped and was being held for \$20,000.00 ransom.

On September 13, 1998, [Salinas] telephoned Anne Gautier, an “acquaintance,” and asked her if he could park an automobile on the rural Jessamine County property where Gautier resided with her husband, Guy Gautier, and their two children. Gautier agreed, and [Salinas] brought a vehicle to her property later that day. The vehicle was later identified as the red 1988 Pontiac belonging to Al Nuckolls.

On Monday, September 14, 1998, Gayle Nuckolls received a letter, postmarked September 11, 1998, threatening not only her husband, but also herself and her father, if she did not respond positively to the previous demand for money. She gave the letter to the police. Approximately one month later, Al Nuckolls's dead body was found in the trunk of the red 1988 Pontiac still parked on the Gautier property. His legs and arms were bound together with baling wire, and his body was wrapped in cardboard and tarpaulin and covered with lime. He had been shot twice, once in the back of the head and once in the right temple.

[Salinas], a person of Mexican heritage, testified that he was engaged in the business of importing merchandise from Mexico to Lexington, Kentucky, for resale. His family lived in Texas, and, when in Lexington, he lived in a house that he shared with Chris Kaluski. [Salinas] admitted that he was acquainted with Nuckolls and that the two had often discussed possible business

transactions but had actually participated in only one small, joint transaction. [Salinas] testified that, on September 10, 1998, Nuckolls came to his residence demanding money. [Salinas] admitted killing Nuckolls but claimed he did so in self-defense. He also admitted that he, with the assistance of Kaluski's employee, Gary Wade, loaded Nuckolls's body into the trunk of the Pontiac, and that he then drove the vehicle to the Gautier property and parked it. Finally, he admitted that he placed the note in the front door of the Nuckolls residence, wrote the threatening letter received by Gayle Nuckolls on September 14, 1998, and made the telephone calls described by Gayle Nuckolls and Nancy Burd. He claimed the kidnap/ransom story was a hoax designed to steer suspicion away from himself.

*Salinas v. Commonwealth*, 84 S.W.3d 913, 914-16 (Ky. 2002) (hereinafter “*Salinas I*”).

In December 1999, Salinas was convicted in the Fayette Circuit Court of capital kidnapping and murder, for which he received sentences of life without the possibility of parole and life imprisonment, respectively. In 2002, Salinas's 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. The retrial gave rise to the 2005 convictions currently at issue. Those convictions were affirmed by our Supreme Court on direct appeal. *See Salinas v. Commonwealth*, No. 2005-SC-000782-MR, 2008 WL 2167065, at \*5 (Ky. May 22, 2008) (hereinafter “*Salinas II*”).

Thereafter, Salinas, *pro se*, sought to vacate his 2005 convictions pursuant to RCr<sup>2</sup> 11.42 due to ineffective assistance of counsel. The Department of Public Advocacy was appointed and filed a supplementary RCr 11.42 motion. In support of the supplementary motion, Salinas asserted multiple arguments that his trial counsel was ineffective, including counsel's alleged improper failure to challenge the prior conviction underlying the PFO charge, violating his *Faretta* rights due to the manslaughter instruction, failing to inform Salinas that criminal attempt theft by extortion is not a lesser-included offense of kidnapping, and failing to challenge bullet fiber evidence. On April 25, 2012, the Fayette Circuit Court rendered an opinion and order denying Salinas's motion for relief. On appeal, a panel of this Court affirmed the circuit court. *Salinas v. Commonwealth*, No. 2012-CA-001967-MR, 2014 WL 1268699, at \*4 (Ky. App. Mar. 28, 2014) (hereinafter *Salinas III*).<sup>3</sup>

In March of 2015, Salinas filed the motion giving rise to this appeal with the circuit court. As observed by the circuit court, Salinas's arguments are vague and difficult to follow. However, they appear to relate to the 1996 conviction, which served as the predicate for the 2005 PFO II conviction. The best we can tell, Salinas's argument is that the 1996 conviction is invalid as a result of

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<sup>2</sup> Kentucky Rules of Criminal Procedure.

<sup>3</sup> Salinas sought discretionary review by the Supreme Court of Kentucky, which was denied by order entered March 25, 2015.

faulty “arrest, search and seizure and plea bargain procedures,” and therefore, cannot support the 2005 PFO II conviction.

The circuit court denied Salinas’s request for relief as follows:

“[T]he Motion is Vague and does not give any reasons as to why the conviction and sentence in this case should be reviewed. Further, the motion is untimely as a matter of law and sets out no basis for relief.”

This appeal followed.

## II. ANALYSIS

Salinas is seeking relief pursuant to CR<sup>4</sup> 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.

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<sup>4</sup> Kentucky Rules of Civil Procedure.

Our standard of review for a trial court's denial of a CR 60.02 motion is whether the trial court abused its discretion. *Commonwealth v. Bustamonte*, 140 S.W.3d 581, 583 (Ky. App. 2004). The test for abuse of discretion is whether the trial court's decision was “arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

“Civil Rule 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 RCr 11.42 proceedings.” *McQueen v. Commonwealth*, 948 S.W.2d 415, 416 (Ky. 1997). Salinas has had ample opportunity to and did fully litigate his 2005 convictions through direct appeal and collateral attack. During both those processes he raised issues concerning the PFO II conviction. Nothing prevented him from asserting the arguments he now makes during those proceedings. In fact, a review of the prior opinions indicates that he did challenge the PFO II conviction on direct appeal, albeit on slightly different grounds. *See Salinas II, supra*.

Most important, however, the 1996 conviction was valid at the time it served as the predicate for the 2005 PFO II conviction. And, it has not since been invalidated. Salinas cannot use a CR 60.02 motion filed as part of this action to invalidate a conviction arising out of an entirely separate and earlier criminal proceeding. Thus, the trial court also was correct when it determined that Salinas’s motion “set out no basis for relief.”

### III. CONCLUSION

In short, Salinas failed to raise any cognizable claim that would entitle him to relief from his 2005 convictions, and the circuit court acted appropriately in denying Salinas relief. Therefore, the March 7, 2016, Order of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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