

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-000779-MR

STACY L. PARTIN

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE CRAIG Z. CLYMER, JUDGE
ACTION NO. 02-CR-00176

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: KRAMER, CHIEF JUDGE; CLAYTON AND TAYLOR, JUDGES.

KRAMER, CHIEF JUDGE: Stacy L. Partin appeals the McCracken Circuit

Court's order denying his motion to recuse, motion for an evidentiary hearing, and

CR¹ 60.02 motion for relief from the court's judgment convicting him of:

kidnapping; two counts of first-degree unlawful imprisonment; first-degree wanton

endangerment; second-degree wanton endangerment; fourth-degree assault; and of

¹ Kentucky Rule of Civil Procedure.

being a second-degree persistent felony offender. After a careful review of the record, we affirm because the circuit court did not abuse its discretion when it denied his CR 60.02 motion, his motion to recuse, and his motion for an evidentiary hearing.

I. FACTUAL AND PROCEDURAL BACKGROUND

Following a jury trial, Stacy L. Partin was convicted of: kidnapping; two counts of first-degree unlawful imprisonment; first-degree wanton endangerment; second-degree wanton endangerment; fourth-degree assault; and of being a second-degree persistent felony offender (PFO-2nd). Due to his PFO-2nd conviction, the sentences for Partin's felony convictions were enhanced to: life imprisonment for the kidnapping conviction; ten years of imprisonment for each of the first-degree unlawful imprisonment convictions; and ten years of imprisonment for the first-degree wanton endangerment conviction. Additionally, Partin was sentenced to one day of imprisonment for his second-degree wanton endangerment conviction and one day of imprisonment for his fourth-degree assault conviction. Partin appealed, and the Kentucky Supreme Court affirmed the circuit court's judgment. *See Partin v. Commonwealth*, 168 S.W.3d 23 (Ky. 2005).

Partin moved to vacate his sentence pursuant to RCr² 11.42. The circuit court denied his motion. He appealed, and this Court affirmed the circuit court's decision. *See Partin v. Commonwealth*, No. 2006-CA-001439, 2007 WL 2812552, *1 (Ky. App. Sept. 28, 2007). Partin sought discretionary review in the

² Kentucky Rule of Criminal Procedure.

Kentucky Supreme Court, but his motion was denied. *See Partin v.*

Commonwealth, 2007-SC-000935-D, *1 (Ky. Oct. 15, 2008).

Partin then moved for relief from the circuit court's judgment pursuant to CR 60.02 and requested an evidentiary hearing. He also moved for the circuit court judge to recuse himself. The circuit court denied Partin's motions.

Partin now appeals, contending that the circuit court abused its discretion when it: (a) denied his CR 60.02 motion; (b) denied his motion to recuse the circuit court judge; and (c) denied his motion for an evidentiary hearing.

II. STANDARD OF REVIEW

On appeal, we review the denial of a CR 60.02 motion for an abuse of discretion. *See White v. Commonwealth*, 32 S.W.3d 83, 86 (Ky. App. 2000).

“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) (internal quotation marks omitted). Civil Rule 60.02 “is not a separate avenue of appeal to be pursued in addition to other remedies, but is available only to raise issues which cannot be raised in other proceedings.” *Id.* “The [CR 60.02] movant must demonstrate why he is entitled to this special, extraordinary relief. Before the movant is entitled to an evidentiary hearing, he must affirmatively allege facts which, if true, justify vacating the judgment and further allege special circumstances that justify CR 60.02 relief.” *Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983). Additionally, claims brought under CR 60.02(a), (b), or (c)

must be brought within one year after the judgment is entered, and claims brought under the remaining sections of CR 60.02 must be brought within a “reasonable time.” *See* CR 60.02.

III. ANALYSIS

A. CR 60.02 MOTION

Partin first alleges that the circuit court erred in denying his CR 60.02 motion. He contends that his motion should have been granted because: trial counsel rendered ineffective assistance; appellate counsel rendered ineffective assistance; the trial judge was biased against Partin; the trial judge ignored most of his RCr 11.42 claims, commenting on only one of his ineffective assistance of counsel claims; and the trial court made various errors, including its findings regarding the waiver of counsel.

These claims were either previously raised, or they could have been raised previously. Therefore, they were not properly brought in Partin’s CR 60.02 motion.

Moreover, the circuit court’s judgment against Partin convicting him of his crimes was entered in 2003. Partin filed his CR 60.02 motion in 2015, twelve years after the judgment was entered. As previously noted, claims brought under CR 60.02(a), (b), or (c) must be brought within one year after the judgment is entered, and claims brought under the remaining sections of CR 60.02 must be brought within a “reasonable time.” *See* CR 60.02. Clearly, any of his claims brought under CR 60.02(a), (b), or (c) were untimely because they were not

brought within one year of the judgment's entry. Further, the claims that Partin raised under the remaining sections of CR 60.02 were not brought within a "reasonable time." Consequently, the circuit court did not abuse its discretion in denying Partin's CR 60.02 motion.

B. MOTION TO RECUSE

Next, Partin contends that the circuit court abused its discretion in denying his motion to recuse the circuit court judge. He claims that the circuit court judge has been biased against him for years, and that the judge had wrongly denied his motion to compel and allowed defense counsel to "abandon" Partin and allowed Partin "to perform tasks absent a waiver of counsel."

The Kentucky Supreme Court has held that:

a judge shall disqualify in a judicial proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer[] or personal knowledge of disputed evidentiary facts concerning the proceeding.

The burden of proof required for recusal of a trial judge is an onerous one. There must be a showing of facts of a character calculated seriously to impair the judge's impartiality and sway his judgment.

Alred v. Commonwealth, Judicial Conduct Commission, 395 S.W.3d 417, 429 (Ky. 2012) (internal quotation marks and footnotes omitted).

In the present case, Partin's claims of bias are based primarily on the fact that the circuit court judge has ruled against him in the past. Partin has not met the "onerous" burden of proof to show the judge's impartiality was impaired to

the extent that it swayed his judgment. Consequently, Partin has failed to show that the judge was required to recuse himself.

C. MOTION FOR EVIDENTIARY HEARING

Finally, Partin asserts that the circuit court abused its discretion when it denied his request for an evidentiary hearing. However, “[b]efore the movant is entitled to an evidentiary hearing, he must affirmatively allege facts which, if true, justify vacating the judgment and further allege special circumstances that justify CR 60.02 relief.” *Gross*, 648 S.W.2d at 856. As previously noted, Partin did not allege facts that would justify vacating the judgment, nor did he allege special circumstances to justify CR 60.02 relief. Consequently, the circuit court did not abuse its discretion when it denied Partin’s request for an evidentiary hearing.

Accordingly, the order of the McCracken Circuit Court is affirmed.

ALL CONCUR.

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