

RENDERED SEPTEMBER 14, 2018; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-000201-MR

BUSTER CHANDLER

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE PAMELA R. GOODWINE, JUDGE
ACTION NO. 90-CR-00433

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AND ORDER
AFFIRMING

** ** * ** * **

BEFORE: COMBS, DIXON AND TAYLOR, JUDGES.

COMBS, JUDGE: Appellant, Buster Chandler, appeals from the Fayette Circuit Court's Order denying his motion for a new trial as having been untimely filed.

After our review, we affirm.

The underlying facts are summarized in a prior decision of this Court, *Chandler v. Commonwealth*, 2002-CA-000781-MR, 2004 WL 1367139, at *1-2 (Ky. App. June 18, 2004), in relevant part, as follows:

On March 25, 1990, Chandler killed his former girlfriend, Glenda Hudson. Chandler bit Hudson several times on the left arm and left cheek; shot her three times; and stabbed her in the head several times with a sharp, round object. While both Chandler and Hudson were from Knoxville, Tennessee, Chandler decided to kill Hudson in Lexington, Kentucky. After killing her, Chandler dumped her body behind a business on New Circle Road in Lexington. Hudson's body was found, and, after a few days, the Lexington police connected Chandler to the crime. Chandler was eventually arrested in Nashville, Tennessee, and while awaiting extradition Chandler confessed to a Lexington police officer and to an assistant commonwealth's attorney that he had killed Hudson in Lexington. At trial, Chandler testified on his own behalf and, once more, confessed to killing Hudson in Lexington, Kentucky, but claimed that he did so under extreme emotional distress.

On April 25, 1991, after a jury trial in Fayette County, Kentucky, Chandler was convicted of murder. After his conviction, in a final judgment and sentence entered on June 4, 1991, the Fayette Circuit Court sentenced Chandler to life in prison. Chandler appealed his conviction to the Supreme Court of Kentucky, which affirmed his conviction. Since his conviction, Chandler has filed numerous post-conviction actions including at least two motions pursuant to RCr 11.42; at least one previous motion pursuant to CR 60.02; numerous state habeas corpus actions; and numerous petitions for writs of mandamus.

In that prior appeal, this Court held that:

[S]ince shortly after Chandler was convicted, he has insisted via various post-conviction actions that he killed Hudson in Tennessee. For Chandler to wait nine years to present these claims was not reasonable, and the trial court acted well within its discretion when it denied Chandler's subsequent CR 60.02 motion as untimely.

Id. at *4.

In the case before us, Chandler filed a motion for a new trial on January 8, 2015, pursuant to RCr¹ 10.02(1), which provides that:

Upon motion of a defendant, the court may grant a new trial for any cause which prevented the defendant from having a fair trial, or if required in the interest of justice. If trial was by the court without a jury, the court may vacate the judgment, take additional testimony and direct the entry of a new judgment.

By Order entered January 21, 2016,² this Court granted Chandler's petition for a writ of mandamus and directed the circuit court to completely adjudicate his pending post-judgment motion for a new trial within 45 days.

By Order entered February 5, 2016, the Fayette Circuit Court denied the motion, finding that "Chandler's latest motion, pursuant to RCr 10.02, is another post-conviction attempt to argue that he killed Hudson in Tennessee rather than Kentucky. He has raised the claim unsuccessfully in numerous post-

¹ Kentucky Rules of Criminal Procedure.

² No. 2016-CA-000457-OA, *Chandler v. Goodwine and Commonwealth of Kentucky*.

conviction proceedings, spanning twenty (20) plus years.”³ The court explained that the time for filing a motion for a new trial runs one year from entry of the final judgment; that the judgment was entered on June 4, 1991; and that Chandler’s motion was time-barred, citing *Bowling v. Commonwealth*, 168 S.W.3d 2 (Ky. 2004). The court also found that regardless of the time factor, Chandler’s motion was without merit or justification for a new trial.

On February 12, 2016, Chandler filed a motion for findings of facts and conclusions of law “pursuant to CR 52.01, 02, 03 and 52.04.” He also filed a motion to proceed *in forma pauperis*. By Order entered February 15, 2016, the court denied Chandler’s motion for additional findings of fact and conclusions of law but granted his motion to proceed *in forma pauperis*. On February 15, 2016, Chandler filed a Notice of Appeal to this Court from the Order denying his motion for a new trial.

RCr 10.06(1) provides that:

The motion for a new trial shall be served not later than five (5) days after return of the verdict. A motion for a new trial based upon the ground of newly discovered evidence shall be made within one (1) year after the entry

³ The record reflects, *inter alia* that Chandler initially filed a motion for new trial on June 13, 1991, in which he alleged that Hudson’s death “was not in the Commonwealth of Kentucky [b]ut in Knoxville, Tn[.]” On August 15, 1991, Chandler filed a “Motion for Rule 59.02 to show Perjury and Falsified Evidence” in which he maintained that Hudson was killed in Knoxville, Tennessee. On September 18, 1991, Chandler filed a motion for a hearing and to vacate and set aside his sentence pursuant to Kentucky Rule of Civil Procedure (CR) 60.02 in which he alleged that “movant is not guilty of the charge due to the crime not being in Lexington Kentucky [b]ut the killing was in Knoxville[,] Tenn[.]”

of the judgment or at a later time if the court for good cause so permits.

The decision whether to grant a motion for a new trial lies wholly within the trial court's discretion. We review the denial of a motion for a new trial only for abuse of discretion. *Bowling*, 168 S.W.3d at 5. Nothing in Chandler's brief persuades us that the trial court abused its discretion in denying the motion.

In its Response, the Commonwealth urges us to deny all further requests on Chandler's part for *in forma pauperis* status citing *Cardwell v. Commonwealth*, 354 S.W.3d 582 (Ky. App. 2011). In *Cardwell*, this Court explained that "where a *pro se* litigant files repetitious and frivolous claims, a court may bar prospective filings to prevent the deleterious effect of such filings on scarce judicial resources." *Id.* at 585. At this juncture, we caution Chandler that if he continues to pursue such collateral attacks, our "conciliatory attitude toward unrepresented parties is not boundless." *Id.* Should Chandler ignore this admonition, the Commonwealth may seek appropriate relief in the future.

The Commonwealth's motion for leave to supplement its brief, which was passed to this panel by Order of this Court entered April 10, 2018, be and is hereby DENIED.

We AFFIRM the Order of the Fayette Circuit Court denying

Chandler's motion for a new trial.

ENTERED: 9-14-2018

/s/ Sara Combs
HON. SARA WALTER COMBS
JUDGE, COURT OF APPEALS

ALL CONCUR.

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