

RENDERED: DECEMBER 7, 2018; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2017-CA-001181-MR

CURTIS FLORA

APPELLANT

v. APPEAL FROM JESSAMINE CIRCUIT COURT  
HONORABLE C. HUNTER DAUGHERTY, JUDGE  
ACTION NO. 13-CR-00024

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, D. LAMBERT, AND SMALLWOOD, JUDGES.

LAMBERT, D., JUDGE: Curtis Flora appeals, *pro se*, from the Jessamine Circuit Court's order denying his motion to vacate sentence under Kentucky Rule of Civil Procedure (CR) 60.02, entered June 27, 2017. We affirm the circuit court.

The underlying events leading to Flora's conviction occurred on December 31, 2012, when Flora repeatedly pummeled his victim in the head

during a physical altercation. The police originally charged Flora with assault in the first degree, which was amended to murder when the victim eventually succumbed to his injuries. The Jessamine County grand jury indicted Flora for murder and for being a persistent felony offender (PFO) in the first degree.<sup>1</sup> Flora pleaded guilty on September 30, 2013, to the amended charge of manslaughter in the first degree.<sup>2</sup> The Commonwealth agreed to dismiss the PFO enhancement and recommend a fifteen-year sentence in exchange for Flora's plea. On October 14, 2013, the trial court sentenced Flora to a total of fifteen years' imprisonment in accordance with the plea agreement.

Nearly four years later, Flora moved for relief under CR 60.02. Flora's grounds for filing the motion included an argument for insufficiency of the evidence and an allegation the trial court erroneously denied an evidentiary hearing on the issue. The trial court denied the motion through a calendar order without an evidentiary hearing, finding Flora did not meet his burden under CR 60.02. This appeal followed.

The standard of review concerning a trial court's denial of a CR 60.02 motion is whether the trial court abused its discretion. *Foley v. Commonwealth*,

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<sup>1</sup> Kentucky Revised Statute (KRS) 532.080(3).

<sup>2</sup> KRS 507.030, a Class B felony.

425 S.W.3d 880, 886 (Ky. 2014). “The test for abuse of discretion is whether the trial judge’s decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999). Further, “a CR 60.02 movant must demonstrate why he is entitled to this special, extraordinary relief.” *McQueen v. Commonwealth*, 948 S.W.2d 415, 416 (Ky. 1997).

Flora contends the trial court erred in denying his motion for an evidentiary hearing and for denying his CR 60.02 motion. Flora argues his conviction is inequitable because he should have been charged with manslaughter in the second degree, instead of in the first degree. As relief, he asserts the trial court should reduce his sentence to ten years’ imprisonment. Flora admits he pummeled the victim, although he denies intending to seriously injure or kill him. He argues the Commonwealth did not prove he had the necessary intent for first-degree manslaughter; Flora insists he did not want the victim to die and he tried to help the victim once he realized the seriousness of the victim’s injuries. Essentially, he is challenging the sufficiency of the evidence against him for a charge of first-degree manslaughter.

The Commonwealth counters the trial court correctly denied his motion because Flora waived his right to appeal the sufficiency of the evidence

against him when he pleaded guilty. We agree with the Commonwealth's reasoning.

Flora waived his right to appeal the sufficiency of the evidence when he pleaded guilty. We note Flora does not dispute entering his guilty plea voluntarily, knowingly, and intelligently. "A guilty plea constitutes a break in the chain of events, and the defendant therefore may not raise independent claims related to the deprivation of constitutional rights occurring before entry of the guilty plea." *Centers v. Commonwealth*, 799 S.W.2d 51, 55 (Ky. App. 1990).

"The effect of entering a voluntary guilty plea is to waive all defenses other than that the indictment charges no offense." *Parrish v. Commonwealth*, 283 S.W.3d 675, 678 (Ky. 2009) (citation omitted). Because Flora waived his right to attack the sufficiency of the evidence against him when he pleaded guilty, he "has forfeited the opportunity to attack his conviction on these grounds[,]" and his motion is unmeritorious. *Id.* "Furthermore . . . there is nothing in the record to indicate that counsel gave unsound advice, or otherwise improper advice, regarding [the] guilty plea." *Id.* Thus, Flora cannot now allege the evidence against him was insufficient because he did not have the necessary intent to be convicted of first-degree manslaughter.

Additionally, an evidentiary hearing was not necessary because the record was sufficient to allow the trial court to make a determination. "A movant

is not entitled to a hearing on a CR 60.02 motion unless he affirmatively alleges facts which, if true, justify vacating the judgment and further allege[s] special circumstances that justify CR 60.02 relief.” *White v. Commonwealth*, 32 S.W.3d 83, 86 (Ky. App. 2000) (internal quotation marks and citation omitted). As noted above, Flora alleged neither facts justifying relief nor special circumstances. Therefore, Flora’s allegation fails on the merits. Accordingly, because the record plainly refutes Flora’s allegation, the trial court did not abuse its discretion in denying Flora’s CR 60.02 motion without holding an evidentiary hearing.

For the foregoing reasons, we affirm the Jessamine Circuit Court’s order denying Flora’s motion to vacate sentence entered June 27, 2017.

ALL CONCUR.

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