

RENDERED: JANUARY 25, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-001212-MR

DAVID COURSEY

APPELLANT

v. APPEAL FROM MUHLENBERG CIRCUIT COURT
HONORABLE BRIAN WIGGINS, JUDGE
ACTION NO. 15-CR-00112

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: DIXON, JONES, AND K. THOMPSON, JUDGES.

DIXON, JUDGE: Appellant, David Coursey, appeals *pro se* from an order of the Muhlenberg Circuit Court denying his motion for post-conviction relief pursuant to CR 60.02. Finding no error, we affirm.

In October 2015, Appellant entered guilty pleas to manufacturing methamphetamine and for being a persistent felony offender. He was sentenced to

a total of twenty-five years' imprisonment. Nearly two years later, on July 21, 2017, Appellant filed a motion for relief pursuant to CR 60.02. Therein, he claimed that new information, in the form of letters from co-defendant Amanda Griffin, would exonerate him. He also alleged an incomplete chain of custody in the evidence. In an order dated June 28, 2017, the trial court denied Appellant's motion, finding that not only was it untimely but that any claim regarding the sufficiency of the evidence was waived by his guilty plea. He now appeals to this Court as a matter of right.

We review the denial of a CR 60.02 motion under an abuse of discretion standard. *White v. Commonwealth*, 32 S.W.3d 83, 86 (Ky. App. 2000); *Brown v. Commonwealth*, 932 S.W.2d 359, 361 (Ky. 1996). "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) (citing 5 Am. Jur. 2d *Appellate Review* § 695 (1995)). Therefore, we will affirm the lower court's decision unless there is a showing of some "flagrant miscarriage of justice." *Gross v. Commonwealth*, 648 S.W.2d 853, 858 (Ky. 1983).

CR 60.02 provides in relevant part,

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: . . . (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; . . . (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.

Under the plain language of the rule, relief may only be granted under CR 60.02(b) if the newly discovered evidence could not have been discovered, with the exercise of due diligence, in time to move for a new trial *and* if the motion is made within one year after entry of the judgment. *Stoker v. Commonwealth*, 289 S.W.3d 592, 596 (Ky. App. 2009); *see also McQueen v. Commonwealth*, 948 S.W.2d 415, 417 (Ky. 1997). As the final judgment herein was entered October 30, 2015, and Appellant's CR 60.02 motion was filed on June 21, 2017, the trial court properly found that any claim raised under subsection (b) was time-barred.

Further, the trial court specifically found that Appellant had failed to allege any circumstance of an extraordinary nature that would justify relief under subsection (f). We agree that any issue related to the chain of custody of the evidence was clearly waived when Appellant entered his guilty pleas, and, in any event, would not warrant review under subsection (f).

The order of the Muhlenberg Circuit Court denying Appellant's motion for post-conviction relief pursuant to CR 60.02 is affirmed.

JONES, JUDGE, CONCURS.

THOMPSON, K., JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

David Coursey, *pro se*
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Andy Beshear
Attorney General of Kentucky

Julie Scott Jernigan
Assistant Attorney General
Frankfort, Kentucky