

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-001510-MR

LEONEL MARTINEZ

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT
HONORABLE JOE CASTLEN, III, JUDGE
ACTION NO. 06-CR-00601

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: GOODWINE, JONES, AND NICKELL, JUDGES.

JONES, JUDGE: Leonel Martinez, proceeding without the assistance of counsel, appeals the Daviess Circuit Court's order denying his request for post-conviction relief pursuant to CR¹ 60.02. After careful review of the record and applicable law, we affirm.

¹ Kentucky Rules of Civil Procedure.

I. BACKGROUND

A Daviess County jury convicted Martinez of complicity to murder and two (2) counts of complicity to first-degree robbery, and he was sentenced to a total of twenty-four years of imprisonment. Martinez appealed to the Supreme Court of Kentucky, which affirmed his conviction. *Martinez v. Commonwealth*, 2008-SC-000082-MR, 2009 WL 2706958 (Ky. Aug. 27, 2009). Martinez then began filing motions for post-conviction relief. First, Martinez moved to modify his sentence pursuant to CR 60.02, which the trial court denied by order entered August 16, 2010. He did not appeal from that order. Second, Martinez moved for post-conviction relief pursuant to RCr² 11.42, which was denied by order entered January 7, 2011. He appealed, and this Court affirmed the trial court's order. *Martinez v. Commonwealth*, 2011-CA-000505-MR, 2012 WL 413689 (Ky. App. Feb. 10, 2012). Third, Martinez filed a second motion pursuant to CR 60.02, which the trial court denied by order entered on May 24, 2017. This appeal followed.

II. STANDARD OF REVIEW

“We review the denial of a CR 60.02 motion under an abuse of discretion standard.” *Foley v. Commonwealth*, 425 S.W.3d 880, 886 (Ky. 2014) (citing *Brown v. Commonwealth*, 932 S.W.2d 359, 361 (Ky. 1996)). “The test for

² Kentucky Rules of Criminal Procedure.

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).

III. ANALYSIS

Martinez argues the trial court erred by rejecting all of the following claims: (1) trial and appellate counsel were ineffective because they failed to argue Hispanics were systematically excluded from the jury pool; (2) there was insufficient evidence to convict him; (3) the trial court failed to excuse a juror whose daughter was in the final trimester of a high-risk pregnancy; (4) he was not offered a favorable plea deal compared to his co-defendants due to his race and business connections; and (5) Sgt. Tim Clothier, Douglas Herrero, and Bruce Kuegel committed perjury. The Commonwealth argues the trial court properly denied Martinez's motion because all his claims are time-barred, procedurally barred, or are otherwise completely without merit.

CR 60.02 permits a party to seek relief from a final judgment on the basis of: (a) mistake, inadvertence, surprise, or excusable neglect; (b) newly discovered evidence; (c) perjury or falsified evidence; (d) fraud; (e) the judgment is void or has been satisfied; or (f) any other reason of an extraordinary nature. A motion seeking relief on the basis of the grounds set forth in CR 60.02(a), (b) or (c) must be made not more than one year after the judgment was entered. Even

though a motion seeking relief on the basis of the grounds set forth in CR 60.02(d), (e), or (f) is not subject to the one-year limitation, it must be brought “within a reasonable time.” Furthermore, “[i]t has long been the policy of [the Kentucky Supreme Court] that errors occurring during the trial should be corrected on direct appeal, and the grounds set forth under the various subsections of CR 60.02 deal with extraordinary situations which do not as a rule appear during the progress of a trial.” *Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983) (quoting *Howard v. Commonwealth*, 364 S.W.2d 809, 810 (Ky. 1963)).

The trial court analyzed each ground for relief Martinez asserted. Ultimately, the trial court determined that each ground could have been raised as part of Martinez’s direct appeal or his subsequent RCr 11.42 motion. We agree with the trial court’s analysis and logic. “CR 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.” *McQueen v. Commonwealth*, 948 S.W.2d 415, 416 (Ky. 1997). All of the grounds raised by Martinez were or could have been raised as part of either his direct appeal or RCr 11.42 motion.

We conclude the trial court exercised sound discretion when it denied Martinez’s CR 60.02 motion. Martinez may not continue to relitigate issues already raised or that could have been raised on direct appeal, in his RCr 11.42 motion, or in his first CR 60.02 motion.

IV. CONCLUSION

For the foregoing reasons, we affirm the Daviess Circuit Court.

ALL CONCUR

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