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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-000149-MR

THOMAS SLIDER

APPELLANT

v. APPEAL FROM GARRARD CIRCUIT COURT
HONORABLE C. HUNTER DAUGHERTY, JUDGE
ACTION NO. 99-CR-00014

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * **

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

THOMPSON, K., JUDGE: Thomas Slider appeals from the Garrard Circuit Court's order denying his motion for post-conviction relief pursuant to Kentucky Rules of Civil Procedure (CR) 60.02. We affirm.

Slider was one member of a trio that robbed the owner of a convenience store on January 25, 1988. During the robbery, the victim was shot

and died. Slider was tried and convicted of wanton murder and first-degree robbery. The jury recommended a sentence of life imprisonment instead of the death penalty. In accordance with the jury's recommendation, the trial court sentenced Slider to life, with a concurrent fifteen-year sentence on the robbery conviction. Final judgment was entered on March 27, 2000.

Slider filed a direct appeal to the Kentucky Supreme Court raising the following issues: (1) whether a statement made by the victim months prior to his death was properly admitted; (2) whether Slider was entitled to a directed verdict on the charge of intentional murder; (3) whether the jury was properly instructed on intentional murder and whether the trial court erred in refusing to instruct on facilitation to second-degree manslaughter and facilitation to reckless homicide; (4) whether the jury should have been allowed to consider the death penalty; (5) whether the trial court erroneously denied the introduction of the penalties received by the other two defendants as mitigation; (6) whether a mistrial should have been granted when a reference was made to another criminal act; (7) whether the trial court abused its discretion in allowing the Commonwealth to recall a witness; and (8) whether the trial court erred in denying Slider's motions to excuse certain jurors for cause and in granting the Commonwealth's motion to strike a juror for cause. The Kentucky Supreme Court affirmed on February 21, 2002.

On March 5, 2003, Slider filed a motion to vacate his conviction pursuant to Kentucky Rules of Criminal Procedure (RCr) 11.42 alleging that he was without counsel for a significant amount of time when he made statements to other inmates and various claims of received ineffective assistance of counsel. The trial court denied the motion on February 10, 2004. Slider appealed, but his appeal was dismissed after he failed to timely file a brief.

On December 15, 2017, Slider filed a motion pursuant to CR 60.02. In that motion, he alleged the following: (1) he should not have faced the death penalty because his co-defendants received lesser sentences; (2) the jury instructions were erroneous; (3) the trial court erred when it did not permit him to introduce information about his co-defendants' sentences as mitigation; (4) counsel failed to have him examined to determine his IQ; (5) he was denied the right to confront witnesses; (6) he was punished for exercising his right to a jury trial; (7) evidentiary errors occurred; and (8) racial bias denied him a fair trial. The trial court denied the motion ruling that the issues were or should have been raised on direct appeal or prior collateral attacks. This appeal followed.

We review the lower court's denial of a CR 60.02 motion under the abuse of discretion standard. *White v. Commonwealth*, 32 S.W.3d 83, 86 (Ky.App. 2000). The Commonwealth contends the trial court did not abuse its discretion

because Slider's claims should have been raised on direct appeal or in a prior post-conviction motion and his motion was untimely. We agree.

“The structure provided in Kentucky for attacking the final judgment of a trial court in a criminal case is not haphazard and overlapping, but is organized and complete. That structure is set out in the rules related to direct appeals, in RCr 11.42, and *thereafter* in CR 60.02.” *Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983). The intent of the rule is to provide “relief that is not available by direct appeal and not available under RCr 11.42.” *Id.* “In order to be eligible for CR 60.02 relief, the movant must demonstrate why he is entitled to this *special, extraordinary* relief.” *Barnett v. Commonwealth*, 979 S.W.2d 98, 101 (Ky. 1998) (emphasis added).

To succeed, a CR 60.02 motion must be timely. Under CR 60.02(a), (b) and (c), that motion must be filed “not more than one year after the judgment, order or proceeding was entered or taken.” Under CR 60.02 (d), (e) or the catchall provision of (f), a motion must be filed within a reasonable time after the judgment, order or proceeding was entered or taken. Because of the passage of time, the only possible relief available to Slider is under CR 60.02 (d), (e) or (f). For the following reasons, the trial court did not abuse its discretion in denying Slider's CR 60.02 motion.

First, Slider unsuccessfully filed a direct appeal where Slider either did or could have raised the issues contained in his CR 60.02 motion. He also previously filed an RCr 11.42 motion, making his CR 60.02 motion a successive post-conviction motion. As stated in *McQueen v. Commonwealth*, 948 S.W.2d 415, 416 (Ky. 1997), “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.” Because Slider either raised or should have raised the claims made in his CR 60.02 motion either in his direct appeal or in his prior post-conviction proceeding, the trial court properly denied the motion.

Furthermore, Slider waited approximately fifteen years after his conviction was affirmed by the Kentucky Supreme Court to file his CR 60.02 motion. Slider failed to bring his motion within a reasonable time as required by CR 60.02. For that additional reason, the trial court did not abuse its discretion when it denied Slider’s CR 60.02 motion.

For the reasons stated, order of the Garrard Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Thomas Slider, *pro se*
Fredonia, Kentucky

BRIEF FOR APPELLEE:

Andy Beshear
Attorney General of Kentucky

Ken W. Riggs
Assistant Attorney General
Frankfort, Kentucky