

RENDERED: AUGUST 9, 2019; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2018-CA-000544-MR

BROCK ANTONIO HANLEY

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT  
HONORABLE JOSEPH W. CASTLEN, III, JUDGE  
ACTION NO. 09-CR-00661

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \* \* \* \*

BEFORE: DIXON, JONES, AND LAMBERT, JUDGES.

LAMBERT, JUDGE: Brock Antonio Hanley, proceeding *pro se*, appeals from an order of the Daviess Circuit Court denying his request for post-conviction relief pursuant to Kentucky Rules of Civil Procedure (CR) 60.02 and Kentucky Rules of Criminal Procedure (RCr) 10.02. We affirm.

Hanley pleaded guilty to murder and first-degree robbery on May 27, 2012, and was sentenced to twenty-five years' imprisonment without parole. On March 27, 2014, Hanley filed a motion to vacate, set aside, or correct sentence pursuant to RCr 11.42, which the trial court denied by order entered May 12, 2014. On August 11, 2014, Hanley tendered a notice of appeal pursuant to *Gabbard v. Lair*, 528 S.W.2d 675 (Ky. 1975) from a June 2, 2014 order imposing a partial filing fee of \$75.00 for an appeal. This Court ultimately dismissed Hanley's appeal as untimely.

On January 2, 2018, Hanley filed a motion for relief pursuant to CR 60.02(b) and (f) and RCr 10.02. Hanley argued trial counsel did not provide access to his entire case file prior to entering his guilty plea. He asserted he finally received his entire case file on December 29, 2016, and he discovered new evidence when he received it. The trial court denied Hanley's motion by order entered March 9, 2018. This appeal followed.

“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 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).

On appeal, Hanley argues the trial court abused its discretion in finding his motion untimely and denied his right to a new trial. Hanley made his motion pursuant to CR 60.02(b) and (f) and RCr 10.02. CR 60.02 provides in pertinent 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; . . . or (f) any other reason of an extraordinary nature justifying relief.

Motions made pursuant to subsection (f) “shall be made within a reasonable time,” and motions pursuant to subsection (b) must be made within one year after entry of the judgment. CR 60.02.

The trial court correctly found Hanley’s motion was time barred under CR 60.02(b) because he filed his motion approximately five and a half years after entry of the judgment. The trial court found Hanley did not assert the claim within a reasonable time under CR 60.02(f) as Hanley waited approximately five and a half years after entry of the judgment to assert it. Additionally, Hanley waited over a year after receiving his entire case file to inform the trial court of what he deems “newly discovered evidence.” “What constitutes a reasonable time is left to the discretion of the trial court[.]” *Commonwealth v. Carneal*, 274 S.W.3d 420, 433 (Ky. 2008); *Gross v. Commonwealth*, 648 S.W.2d 853, 858 (Ky. 1983). As

pointed out by the trial court, Hanley could have sought his full case file when preparing his motion pursuant to RCr 11.42, but instead Hanley waited approximately five and a half years after entering his plea and over a year after receiving the case file to make his claim. Successive post-judgment motions are prohibited, and CR 60.02 “may be utilized only in extraordinary situations when relief is not available on direct appeal or under RCr 11.42.” *Foley*, 425 S.W.3d at 884 (citing *McQueen v. Commonwealth*, 948 S.W.2d 415, 416 (Ky. 1997)). Thus, the trial court did not abuse its discretion in finding Hanley did not move for relief within a reasonable time under CR 60.02.

RCr 10.02 requires a motion for a new trial be made within “ten days after the return of a verdict.” RCr 10.06(1) requires “[a] motion for a new trial based upon the ground of newly discovered evidence . . . be made within one (1) year after the entry of the judgment or at a later time if the court for good cause so permits.” As Hanley filed his motion approximately five and a half years after entry of the judgment, his claim is obviously untimely under RCr 10.02. Hanley failed to give “good cause” for allowing the motion to be filed outside the one-year time limit. As stated above, Hanley waited more than a year after receiving his full case file to file the underlying motion. Thus, the trial court correctly found Hanley was dilatory in seeking his entire case file and filing his motion.

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

ALL CONCUR.

BRIEFS FOR APPELLANT:

Brock Antonio Hanley, *pro se*  
Central City, Kentucky

BRIEF FOR APPELLEE:

Andy Beshear  
Attorney General of Kentucky

Todd D. Ferguson  
Assistant Attorney General  
Frankfort, Kentucky