

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

NO. 2018-CA-000864-MR

DEREK R. TRUMBO, SR.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE AUDRA J. ECKERLE, JUDGE  
ACTION NO. 04-CR-001674

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, NICKELL, AND K. THOMPSON, JUDGES.

COMBS, JUDGE: Derek Trumbo appeals an order of the Jefferson Circuit Court that summarily denied his motion for post-conviction relief filed pursuant to CR<sup>1</sup> 60.02. We affirm.

In June 2004, Trumbo was indicted on two counts of first-degree sodomy, two counts of first-degree sexual abuse, and one count of distribution of

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<sup>1</sup> Kentucky Rules of Civil Procedure.

obscene material to a minor. The charges arose from allegations made by K.M., Trumbo's stepdaughter. Trumbo was first tried in June 2005. Ultimately, a mistrial was declared.

In May 2006, Trumbo was tried a second time. The jury found him guilty of all charges. Trumbo opted to plead guilty rather than proceed to the penalty phase of his trial. He entered a plea of guilty to all five convictions in exchange for a recommendation of a total sentence of twenty-five years. During his plea colloquy, Trumbo indicated that he was satisfied with the advice of his trial counsel, that he wished to plead guilty, and that he waived his right to an appeal. The trial court sentenced Trumbo in accordance with the terms of the plea agreement on July 17, 2006.

On January 4, 2007, six months after his conviction, Trumbo filed his first motion pursuant to CR 60.02. The trial court denied the motion in February 2007, and no appeal was taken.

Four months later, in June 2007, Trumbo filed a motion to vacate the judgment of conviction pursuant to the provisions of RCr<sup>2</sup> 11.42; he also filed a second CR 60.02 motion. Both motions were denied by the trial court in March 2008. In September 2009, we vacated that order (over a strong dissent) and directed the trial court to hold an evidentiary hearing. The trial court conducted the

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<sup>2</sup> Kentucky Rules of Criminal Procedure.

evidentiary hearing in September 2010. In February 2011, the trial court again denied Trumbo's motion for relief. He filed another appeal. In an opinion rendered in August 2012, we affirmed the order of the trial court.

In March 2016, Trumbo filed his third CR 60.02 motion. He contended that he was entitled to relief for three reasons: (1) that the jury instructions denied him a unanimous verdict; (2) that his conviction for distribution of obscene material was prohibited by double jeopardy principles; and (3) that his trial counsel was ineffective for failing to object to the erroneous jury instructions. In August 2016, the trial court summarily denied this successive collateral attack upon the conviction. The trial court observed that Trumbo's arguments in support of relief were either susceptible to direct appeal or should have been raised in his earlier motions for relief. This appeal followed.

We review the denial of a motion for relief filed pursuant to CR 60.02 under the standard of abuse of discretion. *White v. Commonwealth*, 32 S.W.3d 83 (Ky. App. 2000). "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).

The provisions of CR 60.02 may be utilized only in extraordinary situations where relief is not available on direct appeal or under the provisions of RCr 11.42. *McQueen v. Commonwealth*, 948 S.W.2d 415 (Ky. 1997). CR 60.02 is

not intended merely as an additional opportunity to relitigate the same issues which could reasonably have been presented by direct appeal or through an RCr 11.42 proceeding. *Id.* The trial court did not abuse its discretion by concluding summarily that Trumbo's latest motion for relief constitutes an impermissible CR 60.02 motion.

We affirm the order of the Jefferson Circuit Court denying Trumbo's successive motion for relief.

ALL CONCUR.

BRIEF FOR APPELLANT:

Derek R. Trumbo, Sr., *pro se*  
Burgin, Kentucky

BRIEF FOR APPELLEE:

Andy Beshear  
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