

Commonwealth of Kentucky
Court of Appeals

NO. 2019-CA-000169-MR

WILLIAM D. SLONE

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE JULIE REINHARDT WARD, JUDGE
ACTION NO. 10-CR-00204

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: ACREE, COMBS, AND MAZE, JUDGES.

COMBS, JUDGE: William D. Slone appeals from an order of the Campbell Circuit Court entered on December 4, 2018, denying his motion to vacate his sentence pursuant to CR¹ 60.02. After our review, we affirm.

¹ Kentucky Rules of Civil Procedure.

On March 22, 2011, Slone was convicted of first-degree rape, first-degree sodomy, and being a persistent felony offender (PFO) in the first degree. He received a sentence of thirty years and was required to register as a sex offender. In 2012, Slone filed a direct appeal, and his convictions were affirmed.² Additionally, in the following years, Slone filed numerous writs and motions with the circuit court seeking post-conviction relief -- all of which were unsuccessful.

On October 8, 2018, Slone again attempted to vacate his sentence by filing a CR 60.02 motion, his third³ such motion. That motion is the subject of this appeal.

Slone argues that the circuit court committed reversible error because:

1) it instructed the jury as to persistent felony offender in the first degree when he did not qualify under the statute; 2) it did not obtain an updated pre-sentence investigation report and used a false report; and 3) it violated *ex post facto* laws.

The Commonwealth disagrees, contending that the circuit court correctly ruled that the CR 60.02 motion was procedurally barred. We agree.

² See *Slone v. Commonwealth*, 382 S.W.3d 851 (Ky. 2012), for more information regarding Slone's direct appeal and for a detailed recitation of the facts giving rise to his case. For the purposes of this appeal, we need not re-visit the underlying facts.

³ The record shows that Slone filed an identical CR 60.02 motion on December 28, 2018. The court took the motion under submission pending the finalization of this appeal. This is not the first time that Slone has filed an identical subsequent motion with an appeal pending.

Denial of a CR 60.02 motion is reviewed for abuse of discretion.

Stoker v. Commonwealth, 289 S.W.3d 592, 596 (Ky. App. 2009). A circuit court abuses its discretion if a decision is “arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999) (citations omitted). Furthermore,

CR 60.02 does not permit successive post-judgment motions, and the rule may be utilized only in extraordinary situations when relief is not available on direct appeal or under RCr 11.42. That is, 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 an RCr 11.42 proceeding.

Foley v. Commonwealth, 425 S.W.3d 880, 884 (Ky. 2014) (citations omitted).

Slone’s CR 60.02 motion is the very essence of a successive post-judgment motion. Slone claims that the circuit court did not follow the proper sentencing procedure. This is the third time that he has attempted to make this argument by means of a CR 60.02 motion.

Moreover, Slone has previously attempted to raise the same issue in an RCr⁴ 11.42 motion. In one of Slone’s previous appeals of an RCr 11.42 motion, we held that such an error by the circuit court was more appropriate for direct appeal. *Slone v. Commonwealth*, No. 2015-CA-001744-MR, 2017 WL 5187739

⁴ Kentucky Rules of Criminal Procedure.

(Ky. App. Nov. 9, 2017). We also ruled that the RCr 11.42 motion under review failed as being successive. *Id.* So, too, is the CR 60.02 motion at issue before us now. We are not permitted to repeatedly review the merits of Slone's identical claims. *St. Clair v. Commonwealth*, 455 S.W.3d 869, 887 (Ky. 2015).

For the foregoing reasons, we AFFIRM the order of the Campbell Circuit Court denying relief pursuant to CR 60.02.

ALL CONCUR.

BRIEF FOR APPELLANT:

William D. Slone, *pro se*
Eddyville, Kentucky

BRIEF FOR APPELLEE:

Andy Beshear
Attorney General of Kentucky

Perry T. Ryan
Assistant Attorney General
Frankfort, Kentucky