

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-001253-MR

CHRISTOPHER LUTTRELL

APPELLANT

v. APPEAL FROM HENDERSON CIRCUIT COURT
HONORABLE KAREN L. WILSON, JUDGE
ACTION NO. 06-CR-00270

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** ** *

BEFORE: ACREE, COMBS, AND MAZE, JUDGES.

ACREE, JUDGE: Christopher Luttrell appeals the Henderson Circuit Court's order denying him CR¹ 60.02 relief, nine years after final judgment. He alleges the trial court erred by not granting him an evidentiary hearing to determine if the Commonwealth improperly seized DNA evidence. Finding no error, we affirm.

¹ Kentucky Rules of Civil Procedure.

BACKGROUND

On November 14, 2006, a Henderson County grand jury indicted Luttrell for: (1) the murder of social worker Boni Frederick; (2) first-degree robbery; (3) kidnapping; (4) theft by unlawful taking; and (5) being a persistent felony offender. Luttrell and the Commonwealth reached a plea agreement. Pursuant to the agreement, Luttrell pleaded guilty but mentally ill to the charges. He was sentenced to life without the possibility of parole on the murder charge, fifty years for the robbery and kidnapping charges, and ten years for the theft charge.

On October 10, 2008, Luttrell filed an RCr² 11.42 motion to vacate his sentence because of ineffective assistance of counsel. The trial court appointed counsel and held an evidentiary hearing. Following the hearing, the trial court denied Luttrell's RCr 11.42 motion. He appealed the decision, but the appeal was dismissed at his request.

On February 17, 2012, Luttrell filed another motion to vacate his sentence. This time he asserted relief under CR 60.02, asserting numerous claims of error and an identical claim of ineffective assistance of counsel. The trial court denied the motion. Luttrell appealed the decision but only on his ineffective assistance of counsel claim. On appeal, this Court affirmed the trial court, stating

² Kentucky Rules of Criminal Procedure.

the ineffective assistance of counsel claim was barred because he had the opportunity to raise the issue in his previous RCr 11.42 motion, and chose not to raise it. *See Luttrell v. Commonwealth*, No. 2012-CA-001542-MR, 2013 WL 6157170 (Ky. App. Nov. 22, 2013).

Almost four years after this Court's decision was rendered, Luttrell filed a second CR 60.02 motion on June 12, 2017. In this motion, he alleged the Commonwealth illegally seized DNA evidence. The trial court denied this motion, as well. It concluded Luttrell did not bring the motion within a reasonable time under the rule, and that CR 60.02 does not provide relief for this issue. It also found Luttrell waived this claim because he pleaded guilty to the crimes. This appeal followed.

STANDARD OF REVIEW

CR 60.02 authorizes relief from a judgment when any of the following grounds is present:

- (a) mistake, inadvertence, surprise or excusable neglect;
- (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;
- (c) perjury or falsified evidence;
- (d) fraud affecting the proceedings, other than perjury or falsified evidence;
- (e) the judgment is void, or has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
- (f) any other reason of an extraordinary nature justifying relief.

CR 60.02.

A motion based on CR 60.02(a)-(c) must be filed within one year of the judgment; all other motions under the rule must be made “within a reasonable time[.]” *Id.* Such a motion is untimely if the delay in bringing it is substantial and unexplained. *Graves v. Commonwealth*, 283 S.W.3d 252, 257 (Ky. App. 2009) (unexplained delay of seven years before bringing motion is unreasonable). A trial court’s denial of a motion for CR 60.02 relief is reviewed for abuse of discretion. *Commonwealth v. Bustamonte*, 140 S.W.3d 581, 583 (Ky. App. 2004).

ANALYSIS

Luttrell argues the trial court erred by not requiring an evidentiary hearing on his CR 60.02 motion alleging improper DNA seizure. We disagree.

As stated above, a motion based on CR 60.02(a)-(c) must be filed within one year of the judgment; all other motions under the rule must be made “within a reasonable time[.]” CR 60.02. Almost nine years passed between the entry of final judgment and Luttrell’s CR 60.02 motion currently on appeal.

Additionally, Luttrell filed this current CR 60.02 motion four years after this Court rendered a decision on his previous motion. This is clearly an untimely filing. The trial court did not abuse its discretion by denying Luttrell’s motion or failing to have an evidentiary hearing.

Furthermore, the trial court correctly determined Luttrell waived his claim by pleading guilty. CR 60.02 is used as an avenue to appeal claims of error. It is not intended to be used as an additional opportunity to raise defenses. *Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983). Instead, it should be used for relief that is not available by direct appeal and not available under RCr 11.42. *Id.* “Before the movant is entitled to an evidentiary hearing, he must affirmatively allege facts which, if true, justify vacating the judgment and further allege special circumstances that justify CR 60.02 relief.” *Id.* However, the entry of a valid guilty plea effectively waives all defenses, other than that the indictment charged no offense. *Quarles v. Commonwealth*, 456 S.W.2d 693, 694 (Ky. 1970). Guilty pleas also waive the seizure of evidence. *See Parish v. Commonwealth*, 283 S.W.3d 675, 677 (Ky. 2009); *Sanders v. Commonwealth*, 663 S.W.2d 216, 218 (Ky. App. 1983).

Because Luttrell pleaded guilty, he waived any right to challenge improperly seized DNA evidence. We find the trial court did not abuse its discretion in determining Luttrell waived his right.

Finally, “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. *McQueen v. Commonwealth*,

948 S.W.2d 415, 416 (Ky. 1997).” *Foley v. Commonwealth*, 425 S.W.3d 880, 884 (Ky. 2014). This is a successive CR 60.02.

CONCLUSION

For the reasons stated above, we affirm the Henderson Circuit Court’s order denying Luttrell’s CR 60.02 motion.

ALL CONCUR.

BRIEF FOR APPELLANT:

Christopher Luttrell, *pro se*
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Andy Beshear
Attorney General

M. Brandon Roberts
Assistant Attorney General
Frankfort, Kentucky