

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-000961-MR

AMOS STILTNER

APPELLANT

v. APPEAL FROM MONTGOMERY CIRCUIT COURT
HONORABLE EDDY COLEMAN, SPECIAL JUDGE
ACTION NO. 00-CR-00115

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: CLAYTON, CHIEF JUDGE; ACREE AND TAYLOR, JUDGES.

ACREE, JUDGE: Amos Stiltner appeals the Montgomery Circuit Court's orders denying his post-conviction motions for relief pursuant to RCr¹ 10.26. We affirm.

¹ Kentucky Rules of Criminal Procedure.

For a complete description of the factual background, see *Stiltner v. Commonwealth*, No. 2001-SC-000747-MR, 2003 WL 21990212 (Ky. Aug. 21, 2003). For the purposes of this appeal, the following is sufficient.

While in jail on other charges, Stiltner revealed to a fellow inmate his desire to kill a circuit judge, a commonwealth's attorney, and the wife and daughter of the commonwealth's attorney. The inmate informed the Kentucky State Police. The police set up an undercover sting operation.

Based on evidence gathered from that sting, Stiltner was indicted on four counts of conspiracy to commit murder and one count of being a persistent felony offender. The jury convicted Stiltner on all counts. His twenty-year sentence on each count of conspiracy was enhanced to fifty years because of the PFO conviction. The sentences were run consecutively for a total of two hundred years in prison. On direct appeal to the Supreme Court, Stiltner successfully argued the conspiracy charges should have been merged and his sentence was reduced to a total of fifty years. *Id.* at *2.

In 2005, Stiltner filed a motion for relief from the judgment of conviction pursuant to RCr 11.42. The trial court denied his motion and the denial was upheld on appeal in 2010. *Stiltner v. Commonwealth*, No. 2009-CA-001386-MR, 2010 WL 3292945 (Ky. App. Aug. 6, 2010).

Seventeen years after the jury verdict, Stiltner sought post-judgment relief by filing a motion pursuant to RCr 10.26, claiming errors stemming from defective indictments. The trial court denied his motion, prompting Stiltner to file a CR² 59.05 motion, which the trial court denied, as well. Stiltner filed a notice of appeal from both orders. This appeal followed.

“[T]here is no appeal from the *denial* of a CR 59.05 motion.” *Ford v. Ford*, 578 S.W.3d 356, 366 (Ky. App. 2019). Therefore, our focus is solely on the April 25, 2018 order denying the motion Stiltner brought pursuant to RCr 10.26.

Stiltner fails to understand the nature of RCr 10.26. The rule is codified in Part X of the criminal rules. That part is entitled “New Trial” and the first rule stated is RCr 10.02, “Motion for new trial.” RCr 10.26 itself says:

A palpable error which affects the substantial rights of a party may be considered by the court *on motion for a new trial* or by an appellate court on appeal, even though insufficiently raised or preserved for review, and appropriate relief may be granted upon a determination that manifest injustice has resulted from the error.

(Emphasis added.)

Like RCr 9.56(1) that establishes the standard at trial – “beyond a reasonable doubt” – RCr 10.26 simply establishes the standard for a new trial – “manifest injustice” – “to rescue parties who failed to object at trial from the

² Kentucky Rules of Civil Procedure.

consequences of alleged instructional error, under the purview of palpable error review.” *Martin v. Commonwealth*, 409 S.W.3d 340, 344 (Ky. 2013).

In the trial court, palpable error review pursuant to RCr 10.26 for manifest injustice plainly presupposes a “motion for a new trial” RCr 10.26. The rule does not provide an independent vehicle for a post-conviction challenge in the trial court. *Chipman v. Commonwealth*, No. 2007-CA-000329-MR, 2008 WL 682439, at *3 (Ky. App. Mar. 14, 2008) (“CR 61.02 and RCr 10.26 are not mechanisms for obtaining post-conviction relief.”). In the trial court, its function is limited to measuring unpreserved error upon a timely motion for a new trial filed pursuant to RCr 10.02. A motion for a new trial is not timely unless filed “[n]ot later than ten (10) days after return of the verdict” RCr 10.02(2).

Stiltner’s motion now under review was filed nearly two decades after the jury’s verdict that convicted him. Therefore, neither the trial court nor this court could treat his motion as one for a new trial.

Stiltner is not the first to make this mistake and likely will not be the last. On previous occasions, the courts have treated such motions as having been brought pursuant to CR 60.02. *See Chipman*, 2008 WL 682439, at *3. We shall do the same.

By treating Stiltner’s motion in the trial court as having been brought pursuant to CR 60.02, we resurrect the utility of RCr 10.26 because, in addition to

its application in the trial court as described, the rule allows palpable error review by the appellate court, so long as the party satisfied the appellate rules for getting the case before this Court.

Although we incorporate considerations of manifest injustice in our appellate review, we do so in the context of the standard for reviewing any denial of a motion pursuant to CR 60.02. “The standard of review of an appeal involving a CR 60.02 motion is whether the trial court abused its discretion.” *White v. Commonwealth*, 32 S.W.3d 83, 86 (Ky. App. 2000) (citing *Brown v. Commonwealth*, 932 S.W.2d 359, 361 (Ky. 1996)). Therefore, we review the record to see if the trial court abused its discretion in its own palpable error review for manifest injustice.

In this case, we find no abuse of discretion in the trial court’s denial of post-judgment relief for manifest injustice. On its face, the motion could have been denied as untimely. The rule addresses itself to six categories of post-conviction relief and says, “The motion shall be made within a reasonable time” and, if brought under one of the first three categories, “not more than one year after the judgment” CR 60.02. Stiltner’s allegations of improper indictments were known or knowable many years ago and were required to be raised long before now. The motion might have been denied on that basis alone.

However, the trial court undertook a thorough palpable error review and found that no error in the indictments could have reasonably misled or prejudiced him in any way. On that basis, the trial court concluded Stiltner was not a victim of manifest injustice.

We find the trial court's analysis thorough, well-reasoned, and well within the boundaries of discretion. Therefore, for the reasons stated in the April 25, 2018 order of the Montgomery Circuit Court, we affirm.

ALL CONCUR.

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