

Commonwealth of Kentucky

Court of Appeals

NO. 2019-CA-000001-MR

JACQUELINE WIDDIFIELD

APPELLANT

v.

APPEAL FROM HANCOCK CIRCUIT COURT
HONORABLE THOMAS O. CASTLEN, JUDGE
ACTION NO. 12-CR-00041

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, CHIEF JUDGE; DIXON AND MAZE, JUDGES.

CLAYTON, CHIEF JUDGE: Jacqueline Widdifield appeals the Hancock Circuit Court's November 2, 2018 order denying her motion to modify her sentence pursuant to CR¹ 60.02(e) and (f). After a review of the record and the arguments presented, we affirm.

¹ Kentucky Rules of Civil Procedure.

This case began in 2012 when law enforcement officers arrived at the home of Jacqueline and Allan Widdifield to serve an arrest warrant on Allan. A full recitation of the facts can be found in *Widdifield v. Commonwealth*, No. 2013-SC-000663-MR, 2014 WL 4656840 (Ky. Sept. 18, 2014).² However, pertinent to the present appeal, is that in 2013 Jacqueline was tried and convicted by a jury of complicity to manufacturing methamphetamine,³ complicity to first-degree trafficking in a controlled substance,⁴ complicity to unlawful possession of anhydrous ammonia in an unapproved container with intent to manufacture methamphetamine,⁵ and possession of drug paraphernalia.⁶ All charges, except for the unlawful possession of anhydrous ammonia, were firearm enhanced pursuant to KRS 218A.992, thereby raising the penalties by one class. A month after trial, Jacqueline was formally sentenced to imprisonment for a total of twenty years.

Soon thereafter, the Widdifields filed a direct appeal. In a separate opinion the Kentucky Supreme Court affirmed Jacqueline's conviction. She then filed a motion pursuant to RCr 11.42 to vacate her conviction based upon

² See also our opinion addressing the denial of Jacqueline's Kentucky Rules of Criminal Procedure (RCr) 11.42 motion, *Widdifield v. Commonwealth*, Nos. 2016-CA-001514-MR and 2016-CA-001515-MR, 2018 WL 385540 (Ky. App. Jan. 12, 2018).

³ Kentucky Revised Statutes (KRS) 218A.1432, a Class B felony.

⁴ KRS 218A.1412, a Class C felony.

⁵ KRS 250.991(2), a Class B felony.

⁶ KRS 218A.500(2), a Class A misdemeanor.

ineffective assistance of counsel. The motion was ultimately denied by the circuit court, and we affirmed its decision on appeal.

Jacqueline then filed a *pro se* motion to modify her sentence pursuant to CR 60.02(e) and (f). She argued she was inappropriately classified as a violent offender, meaning she would serve eighty-five percent of her sentence. Jacqueline claims to have originally believed she would be parole eligible after serving twenty percent of her sentence.

The circuit court found that a violent offender is anyone convicted of a Class A felony, and, if an individual is classified as such, Kentucky law requires them to serve eighty-five percent of their sentence. Therefore, the court ruled that Jacqueline, having been convicted of a Class A felony, was appropriately classified under Kentucky law. Jacqueline also filed motions to proceed *in forma pauperis* and for the appointment of counsel. The former was granted while the latter was denied. This appeal followed.

Before filing her appellate brief, Jacqueline filed a motion with this court for the appointment of counsel. After allowing the Department of Public Advocacy (DPA) to review the matter, we denied the motion because it did not appear to be a proceeding that a reasonable person with adequate means would be willing to bring at her own expense. Following our ruling, the parties filed their briefs and no additional motions.

Jacqueline makes the following arguments: (1) “[She] received a firearm attachment illegally which raised her charges to a higher class felony. This enhancement changed her parole eligibility date from 20% to 85%”; (2) “Statutes KRS § 218A.1432(2) and KRS § 218A.992(1) were used to convict [her]. These were wrongly applied to [her]”; (3) “There was a violation of sufficient evidence and double jeopardy concerning [her]”; (4) “[She] was granted appointment of counsel then denied after DPA said this case did not meet the standards for representation”; and (5) “[She] was incarcerated nearly four (4) years before being reclassified as a violent offender. This shocked her parole eligibility and expected liberties.” For reasons that follow, these arguments are without merit.

The 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). The 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).

CR 60.02 is not intended to give a defendant another chance to litigate issues that should have been addressed on direct appeal or through an RCr 11.42 proceeding.

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). The conclusion of either proceeding effectively prevents an appellant from later raising any issue that could have been presented therein. *Id.*

Jacqueline's motion is a successive post-judgment motion.

Essentially, issues one, two, three, and five pertain to her indictment, trial, and sentencing. These issues could have been raised in her direct appeal or RCr 11.42 motion. Kentucky law is clear, the issues cannot be raised now under the guise of a CR 60.02 motion.⁷ *Owens v. Commonwealth*, 512 S.W.3d 1, 14 (Ky. App. 2017) (citing *McQueen v. Commonwealth*, 948 S.W.2d 415, 416 (Ky. 1997)).

Accordingly, we need not address the merits of these issues.

Furthermore, it is unclear whether Jacqueline is addressing our order denying her motion for the appointment of counsel, or the circuit court's.

Regardless, the argument is without merit because appellants are not entitled to

⁷ Jacqueline also argues she could not raise the parole issue in her direct appeal because she was unaware she was charged with a Class A felony and classified as a violent offender, necessitating she serve eighty-five percent of her twenty-year sentence, until she received a Department of Corrections resident card in 2018 showing this information. This argument is disingenuous and without merit. At the sentencing hearing a witness from the Department of Probation and Parole testified the Widdifields were charged with a Class A felony. Additionally, on two occasions she stated if the Widdifields were sentenced to twenty years then they would have to serve eighty-five percent of their sentences, which was seventeen years and five months. Moreover, a letter produced by Jacqueline's trial attorney in the RCr 11.42 proceeding indicated he also went over these sentencing requirements with her post-trial.

appointed counsel for a CR 60.02 motion. *Gross v. Commonwealth*, 648 S.W.2d 853, 857-58 (Ky. 1983).

For the foregoing reasons, we affirm the Hancock Circuit Court's November 2, 2018 order.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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