

IMPORTANT NOTICE
NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28 (4) (c), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS AUTHORITY IN ANY OTHER CASE IN ANY COURT OF THIS STATE.

Supreme Court of Kentucky **FINAL**

2004-SC-0931-MR

DATE 2-23-06 EJA/Gravitt, DC.

ROBERT KEITH WOODALL

APPELLANT

V.

APPEAL FROM CALDWELL CIRCUIT COURT
HONORABLE BILL CUNNINGHAM, JUDGE
97-CR-00053

COMMONWEALTH OF KENTUCKY

APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

In April 1998, Appellant, Robert Keith Woodall, entered a guilty plea for the murder, rape, and kidnapping of high school honor student Sarah Hansen. On July 20, 1998, the jury recommended a death sentence on the capital murder charge along with two consecutive life sentences for the rape and kidnapping charges. The trial court entered a final judgment according to the jury's sentence on September 4, 1998. The judgment was affirmed on appeal. Woodall v. Commonwealth, 63 S.W.3d 104 (Ky. 2001), *cert. denied*, 537 U.S. 835, 123 S.Ct. 145, 154 L.Ed.2d 54 (2002). In December 2002, Appellant filed an RCr 11.42 motion which was denied by the trial court in April 2003. The subject of this appeal, however, is Appellant's request for relief under CR 60.02(f). The trial court denied Appellant's request without an evidentiary hearing and

issued an order detailing its findings. In this appeal, Appellant claims the trial court erred in denying his request for a new trial.

I. CR 60.02 CLAIM

Appellant's CR 60.02 claim stems from an affidavit signed by Juror H, a juror in the sentencing trial, stating she looked up Bible verses relating to capital punishment on the Internet, printed them out, and brought the verses to the jury room during deliberations. Appellant argues Juror H brought prejudicial extraneous information into the jury room and provided the material to other jurors. Juror H's affidavit, however, states she does not know if any other jurors actually looked at her Bible verses, and she is not exactly sure which day of the sentencing trial she took the verses to court.

A. Procedure

It is necessary to consider the chronology of the post-conviction events. The United States Supreme Court denied certiorari on October 7, 2002. Thereafter, the governor signed a death warrant with an execution date of December 10, 2002. As a result, Appellant claims he was "forced by the Commonwealth" to file an RCr 11.42 motion in a short period of time. In his RCr 11.42 motion Appellant made no allegations of juror misconduct, although one juror, Juror M, had been interviewed at that time. Juror M gave Appellant no information favorable to his argument as she stated there was no juror misconduct, extraneous prejudicial information, or improper outside influence.

After the unfavorable interview with Juror M, Appellant alleged other claims in his RCr 11.42 motion, which he filed December 3, 2002, seven days before his scheduled execution date. Pursuant to this filing, the execution date was set aside until Appellant's pending claims could be resolved. The trial court denied Appellant's motion to vacate

the death sentence pursuant to RCr 11.42 on April 22, 2003. Appellant's investigators interviewed Juror H on May 31, 2003. She executed a "preliminary" affidavit on June 9, 2003, and signed a "cleaned-up" affidavit on September 10, 2003. Appellant filed a claim pursuant to CR 60.02(f) on June 1, 2004.

B. Analysis

First, we analyze the standard by which CR 60.02(f) relief is granted. The rule allows a trial court to set aside a final judgment for "any other reason of an extraordinary nature justifying relief." CR 60.02(f). Our leading case on CR 60.02 is Gross v. Commonwealth, 648 S.W.2d 853 (Ky. 1983). Procedurally, Gross requires Appellant to first seek relief pursuant to RCr 11.42 and to "state *all* grounds for holding the sentence invalid of which the movant has knowledge" in the RCr 11.42 proceedings. Id. at 856 (quoting RCr 11.42 (3))(emphasis added). Thereafter, a defendant may request extraordinary relief pursuant to CR 60.02, but may not rehash arguments that were or should have been raised on direct appeal or pursuant to RCr 11.42. Id.

In this case, Appellant argues that a "premature" death warrant prevented him from fully developing and investigating all of his claims prior to the filing of the RCr 11.42 motion. We find this claim to be unconvincing. The death warrant was not "premature" in this case because the Governor is authorized to set a date of execution at any time after a death sentence has been affirmed. KRS 431.218. It is not within our power to disturb the Governor's policy on such matters. Bowling v. Commonwealth, 926 S.W.2d 667, 669 (Ky. 1996).

Moreover, as noted in Baze v. Commonwealth, 23 S.W.3d 619, 623 (Ky. 2000), "[A]ppellant had over fourteen months from the issuance of this Court's opinion affirming

his conviction to prepare an RCr 11.42 motion.”¹ Thus, Appellant has set forth no valid excuses for waiting until three weeks before his scheduled execution to interview Juror M. Ostensibly, once Juror M stated there was no wrongdoing by jurors, Appellant apparently chose not to pursue any other interviews as a matter of strategy.

Finally, even if Appellant’s counsel did not feel there was sufficient time to fully investigate potential juror misconduct before filing the RCr 11.42 motion, an amendment to that motion could have been filed after further investigation. As we recognized in Bowling, the nature of an RCr 11.42 motion is that it must be both speedy and specific, and accordingly, “leave [to amend] shall be freely given when justice so requires.” Bowling, supra, at 670 (quoting CR 15.01). Thus, for the reasons set forth herein, Appellant’s CR 60.02 claim is procedurally barred since the issue set forth within it should have been raised in his RCr 11.42 motion. Gross, supra, at 857 (“The language of RCr 11.42 forecloses the defendant from raising any questions under CR 60.02 which are ‘issues that could reasonably have been presented’ by RCr 11.42 proceedings.”).

II. JUROR MISCONDUCT

Even if Appellant’s claims were not procedurally barred, relief would not be available, as his allegations are without merit. However, because this is a death penalty case, we will nonetheless address Appellant’s juror misconduct claim.

Appellant argues the trial court erred in finding that RCr 10.04 is a barrier to relief. The rule states “[a] juror cannot be examined to establish a ground for a new trial, except to establish that the verdict was made by lot.” RCr 10.04. The trial court has great latitude in deciding whether to grant a new trial, and the decision is disturbed

¹ This Court’s opinion affirming Appellant’s death sentence was issued August 23, 2001. The United States Supreme Court denied certiorari on October 7, 2002.

only for abuse of discretion. Jillson v. Commonwealth, 461 S.W.2d 542, 545 (Ky.1970). We find the trial court properly denied Appellant's request for a new trial and correctly relied upon RCr 10.04 to bar juror testimony.

Appellant contends that the testimony of Juror H regarding what may have occurred in the deliberation room warrants a new trial. RCr 10.04 and the accompanying case law recognize that a juror's testimony regarding deliberations cannot be used to impeach the verdict. See Hicks v. Commonwealth, 670 S.W.2d 837, 839 (Ky. 1984); Grace v. Commonwealth, 459 S.W.2d 143 (Ky. 1970); Bowman v. Commonwealth, 284 Ky. 103, 143 S.W.2d 1051, 1054 (1940).

Appellant argues his case is similar to Ne Camp v. Commonwealth, 311 Ky. 676, 225 S.W.2d 109 (1949). In Ne Camp, a juror consulted with a priest regarding the moral implications of imposing the death penalty, and then told another juror during deliberations that the priest advised it was not a moral sin. Id. at 111-12. The Ne Camp Court found juror misconduct "obvious" and reversed the judgment of the trial court. Id. at 112.

Appellant relies upon Ne Camp because the Court accepted juror testimony regarding juror misconduct during deliberations. However, we find Appellant's reliance to be misplaced. In Gall v. Commonwealth, 702 S.W.2d 37, 44 (Ky. 1985), this Court distinguished Ne Camp, stating, "Necamp does not sanction examination of jurors to search for inconsistencies in their deliberations. Necamp only addresses the issue of jurors who consult with others and carry their advice into the jury room." Id.

We find the reasoning of Gall applicable here. In this case, aside from Juror H's uncorroborated affidavit, there is no evidence establishing what was actually brought into the jury room or that any other juror was affected by the presence of these

materials. Juror H stands alone in her allegations, and we find such singular evidence to be insufficient to prove juror misconduct in this instance.

Conversely, there was sufficient evidence for the jurors to reach an impartial, unanimous decision imposing the death penalty, especially in light of Appellant's voluntary guilty plea to the heinous murder of Sarah Hansen. The relevant public policy concerns of finality of a jury verdict, protecting jurors from continued post verdict interference, and maintaining the integrity of the jury trial system would be undermined if lone jurors were routinely permitted to second-guess the deliberative process once the trial is over. After the trial is over, the collective jury decisional process no longer exists. Accordingly, we find no abuse of the trial court's discretion, and agree that RCr 10.04 bars the proffered juror testimony in this case.

III. CONCLUSION

Appellant also raises additional claims arising from the alleged juror misconduct: 1) Kentucky's interpretation of Federal Rule of Evidence 606(b); 2) timeliness of the CR 60.02 claim; 3) right to an impartial jury; 4) Establishment Clause violation; and 5) right to an evidentiary hearing.

Having found that Appellant's CR 60.02 claim is procedurally barred, and that the trial court's reliance on RCr 10.04 is substantively sound, we need not address Appellant's remaining claims. Accordingly, the Caldwell Circuit Court's order denying relief under CR 60.02 is affirmed.

All concur.

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