

RENDERED: FEBRUARY 7, 2003; 10:00 a.m.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2002-CA-000256-MR

LUIS ALBERTO GALEANO

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE STEPHEN K. MERSHON, JUDGE  
ACTION NO. 97-CR-001173

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \* \*

BEFORE: GUIDUGLI, JOHNSON, AND KNOPF, JUDGES.

KNOPF, JUDGE: Luis Alberto Galeano appeals from an order of the Jefferson Circuit Court which denied his CR 60.02 motion to amend his judgment of conviction. We agree with the trial court that Galeano's allegations are without merit and were clearly refuted by the record. Hence, we affirm.

On February 3, 1998, Galeano entered a plea of guilty to third-degree rape,<sup>1</sup> third-degree sodomy,<sup>2</sup> and two counts of

---

<sup>1</sup> KRS 510.060.

first-degree sexual abuse.<sup>3</sup> Pursuant to his agreement with the Commonwealth, the rape and sodomy charges were reduced from first to third-degree, and two additional counts, of first-degree sexual abuse and incest, respectively, were dismissed. Following entry of his guilty plea, the trial court sentenced Galeano to a total of ten years' imprisonment.

In November of 2001, Galeano filed a motion to modify his sentence pursuant to CR 60.02(f). He also requested that the court appoint counsel for him and hold an evidentiary hearing. The trial court denied the motion, finding that Galeano had failed to allege any facts or circumstances which would justify the relief he sought. This appeal followed.

Primarily, Galeano asserts that his guilty plea to the two charges of first-degree sexual abuse was improper because there was no evidence that he had subjected another person to sexual contact by forcible compulsion or that he had subjected a person under the age of twelve to sexual contact. In the absence of this statutory element for the offense, Galeano argues that the charges of first-degree sexual abuse should have been amended to sexual misconduct,<sup>4</sup> a class A misdemeanor.

---

<sup>2</sup> KRS 510.090.

<sup>3</sup> KRS 510.110.

<sup>4</sup> KRS 510.140.

We find no merit to Galeano's argument. In addition to the enumerated grounds for relief from a judgment, CR 60.02(f) allows a trial court to set aside a judgment based upon "any other reason of an extraordinary nature justifying relief." What constitutes a reason of extraordinary nature is left to judicial construction.<sup>5</sup> Furthermore, a movant is not entitled to a hearing on a CR 60.02 motion unless he "affirmatively alleges facts which, if true, justify vacating the judgment and further allege[s] special circumstances that justify CR 60.02 relief."<sup>6</sup> A trial court's ruling on a CR 60.02 motion is entitled to great deference and will not be overturned on appeal except for an abuse of discretion.<sup>7</sup>

In this case, the record clearly refutes Galeano's allegations. During his guilty-plea colloquy, he specifically admitted that he had subjected his two step-daughters to sexual contact through the use of forcible compulsion. The facts which Galeano admitted supported all of the necessary elements of the charged offense. Galeano presented no extraordinary reason which would warrant setting aside his conviction. Consequently,

---

<sup>5</sup> Commonwealth v. Spaulding, Ky., 991 S.W.2d 651, 655 (1999).

<sup>6</sup> McQueen v. Commonwealth, Ky., 948 S.W.2d 415, 416 (1997) (quoting Gross v. Commonwealth, Ky., 648 S.W.2d 853, 856 (1983)).

<sup>7</sup> Barnett v. Commonwealth, Ky., 979 S.W.2d 98, 102 (1998); and Brown v. Commonwealth, Ky., 932 S.W.2d 359, 361 (1996).

the trial court properly denied his CR 60.02(f) motion without an evidentiary hearing or appointment of counsel.

Accordingly, the order of the Jefferson Circuit Court denying Galeano's motion to amend his judgment of conviction is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Luis Alberto Galeano, *pro se*  
Western Kentucky Correctional  
Complex  
Fredonia, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler III  
Attorney General of Kentucky  
  
Gregory C. Fuchs  
Assistant Attorney General  
Frankfort, Kentucky