

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000291-MR

STEVEN KEITH HALSEY

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE GARY D. PAYNE, JUDGE
ACTION NO. 93-CR-00170

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, GUIDUGLI, and SCHRODER, Judges.

COMBS, JUDGE. Steven Keith Halsey appeals from the January 3, 2002 order of the Fayette Circuit Court denying his motion filed pursuant to CR¹ 60.02 to modify is sentence of imprisonment. We affirm.

After a jury trial in 1993, Halsey was convicted of first-degree perjury and of being a first-degree persistent felony offender (PFO). He was sentenced to serve ten years in

¹ Kentucky Rules of Civil Procedure.

prison. Later in the same year, he pled guilty to one count of first-degree rape and was sentenced to an additional ten years in prison. Five years of that sentence were ordered to run consecutively as to the PFO sentence. After the convictions of perjury and PFO were affirmed by this Court on direct appeal², Halsey unsuccessfully sought post-conviction relief in the Fayette Circuit Court pursuant to RCr³ 11.42. The denial of this motion was affirmed on appeal.⁴ The record also indicates that Halsey was denied relief pursuant to a *habeas corpus* proceeding filed in federal court.

On December 7, 2001, Halsey filed a motion pursuant to CR 60.02, accompanied by requests for an evidentiary hearing and for the appointment of counsel. Halsey argued that the trial court should reduce his sentence to ten years by contending essentially that he has unfairly been held accountable for his lawyer's:

failure to properly exhaust remedies and place his arguments before the courts in a complete manner or timely manner.

Halsey's motion constituted a general allegation that he was being punished for counsel's poor performance and stated no specific examples or concrete bases. Noting the lack of specificity, the trial court denied the motion and stated that

² See, 93-CA-1676-MR, rendered October 14, 1994.

³ Kentucky Rules of Criminal Procedure.

⁴ See, 95-CA-937-MR, rendered March 21, 1997.

Halsey failed to "set forth any basis for the Court to grant the relief he is requesting."

On appeal, Halsey argues that he was not given a fair opportunity to present his claim on the merits" and asks that we remand the matter for an evidentiary hearing. He alleges (again in general terms) that his "rights were in fact violated throughout the course of his conviction." Halsey does not state which of his rights was violated -- nor does he allude to what evidence he would present if the matter were remanded for a hearing.

After reviewing the record, we have found no abuse of discretion by the trial court in denying Halsey's motion. A CR 60.02 motion should not be utilized to litigate issues that could have been raised either on direct appeal or in an RCr 11.42 motion. Gross v. Commonwealth, Ky., 648 S.W.2d 853 (1983); McQueen v. Commonwealth, Ky., 948 S.W.2d 415, 416 (1997), cert. denied, 521 U.S.1130, 117 S.Ct. 2535, 138 L.Ed.2d 1035 (1997). Although the allegations contained in his CR 60.02 motion are non-specific, they strongly intimate claims of ineffective assistance of counsel -- issues that should have been raised in Halsey's RCr 11.42 motion. Additionally, in order to be entitled to relief under CR 60.02, the movant must establish a "reason of an extraordinary nature justifying relief." From our review of the record, the trial court

accurately stated that Halsey failed to allege the existence of such grounds warranting relief under the criteria of CR 60.02. We agree that he was not entitled to the appointment of counsel or to an evidentiary hearing.

The judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Steve Halsey, *pro se*
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler III
Attorney General of Kentucky

Rickie L. Pearson
Assistant Attorney General
Frankfort, Kentucky