

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2002-CA-000663-MR

MICHAEL W. RILEY

APPELLANT

APPEAL FROM ANDERSON CIRCUIT COURT  
v. HONORABLE WILLIAM F. STEWART, JUDGE  
ACTION NO. 90-CR-00009-1 AND NO. 90-CR-00026-1

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

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BEFORE: EMBERTON, CHIEF JUDGE; BUCKINGHAM AND PAISLEY, JUDGES.  
PAISLEY, JUDGE. This is a pro se appeal from an order entered  
by the Anderson Circuit Court denying appellant's motion seeking  
a reduction of his criminal sentence or a dismissal of the  
charges against him. For the reasons stated hereafter, we  
affirm.

Appellant entered a guilty plea in March 1991 to  
capital murder and numerous other charges. The judgment was  
later set aside pursuant to RCr 11.42. On remand in May 1995,

appellant entered a guilty plea to capital murder and five counts of first degree unlawful imprisonment. He filed a pro se motion in September 1997, alleging that the victim's death was accidental and seeking a reduced sentence pursuant to CR 60.02(f). The motion was denied. Appellant filed a second pro se motion for CR 60.02 relief in June 1999, reasserting the grounds previously alleged and also stating that the charges should be dismissed because the commonwealth destroyed much of the underlying evidence after he entered his 1991 guilty plea. The motion was denied. Another pro se motion, filed in August 2001, sought a reduction of appellant's sentence on the grounds that he had been rehabilitated and his family needed him. Again, the motion was denied. Finally, appellant filed a pro se motion seeking a reduced sentence both because of the destruction of the underlying evidence, and because the attorney who prosecuted him in 1995 allegedly was later convicted of criminal charges relating to the taking of bribes. The motion was denied, and this appeal followed.

Appellant in essence asserts on appeal that the trial court erred by failing to set aside the 1995 judgment against him because much of the supporting evidence was destroyed after the 1991 judgment was entered and therefore was not available to support a prosecution in 1995. He also alleges that the original prosecuting attorney indicated that the charges would

be dismissed due to the destruction of evidence, but that the attorney then fell ill before seeking dismissal of the charges. Appellant asserts that the successor prosecuting attorney then coerced him into entering his 1995 guilty plea. Appellant implies that the latter attorney offered him unfavorable plea bargain terms because he did not offer her a bribe in exchange for a more favorable recommendation.

Our review of the record shows that the destruction of evidence issue was also raised in appellant's June 1999 motion for CR 60.02 relief. That matter was finally and conclusively adjudicated by the trial court's ruling, and no appeal was taken from the court's denial of the motion. Hence, the doctrine of res judicata bars further litigation of the issue. See Richardson v. Brunner, Ky., 328 S.W.2d 530 (1959). Moreover, although res judicata did not bar appellant from raising the allegation of prosecutorial misconduct in this proceeding, there is no probative evidence in the record to demonstrate that the prosecutor acted improperly herein, or to show that the trial court imposed an illegal sentence. We conclude, therefore, that the trial court did not err by denying appellant's motion to set aside the judgment.

The court's order is affirmed.

ALL CONCUR.

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