

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002438-MR

MARK KEITH DIXON

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE LAURANCE B. VANMETER, JUDGE
ACTION NO. 00-CR-01114

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: EMBERTON, CHIEF JUDGE; BUCKINGHAM AND KNOPF, JUDGES.

EMBERTON, CHIEF JUDGE. Mark Keith Dixon was convicted by a jury of first-degree burglary. He pleaded guilty to first-degree assault and assault under extreme emotional disturbance. On May 4, 2001, he was sentenced on all charges and received fifteen years on the burglary conviction, ten years' imprisonment for the first-degree assault conviction, and one year for the assault under extreme emotional disturbance conviction.

Although the court found Dixon to be a violent offender, the

judgment and sentence did not reference KRS¹ 439.3401. Dixon appealed challenging the burglary conviction. The appeal was transferred to the Kentucky Supreme Court, which affirmed the conviction on October 29, 2002.

On October 2, 2002, Dixon filed a pro se "Petition for Order to Clarify" the final judgment and argued that he was not properly sentenced. In response, on October 14, 2002, the court issued an order stating that Dixon was sentenced as a violent offender pursuant to KRS 439.3401. On October 29, 2002, Dixon filed a motion to vacate or set aside his conviction pursuant to CR² 60.02. The circuit court denied the motion without conducting an evidentiary hearing and this appeal followed.

Dixon argues in his CR 60.02 motion that he received ineffective assistance of counsel; that his guilty plea was not knowingly and voluntarily entered; and that the circuit court did not have authority to amend the final judgment. The issues raised by Dixon should have been brought either in his direct appeal or in an RCr³ 11.42 motion. The application of CR 60.02 is fully explained in Gross v. Commonwealth:⁴

The structure provided in Kentucky for
attacking the final judgment of a trial

¹ Kentucky Revised Statutes.

² Kentucky Rules of Civil Procedure.

³ Kentucky Rules of Criminal Procedure.

⁴ Ky., 648 S.W.2d 853 (1983).

court in a criminal case is not haphazard and overlapping, but is organized and complete. That structure is set out in the rules related to direct appeals, in RCr 11.42, and *thereafter* in CR 60.02. CR 60.02 is not intended merely as an additional opportunity to raise *Boykin* defenses. It is for relief that is not available by direct appeal and not available under RCr 11.42. The movant must demonstrate why he is entitled to this special, extraordinary relief. Before the movant is entitled to an evidentiary hearing, he must affirmatively allege facts which, if true, justify vacating the judgment and further allege special circumstances that justify CR 60.02 relief.⁵ (Emphasis original.)

The issues raised in this appeal were known to Dixon at the time he filed his direct appeal or could have been raised in an RCr 11.42 motion. The circuit court properly summarily denied his CR 60.02 motion.

The order of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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⁵ Id. at 856.