

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2002-CA-002565-MR

MARLON DION WILKERSON

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE LAURANCE B. VANMETER, JUDGE  
ACTION NO. 98-CR-00631

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: JOHNSON AND TAYLOR, JUDGES; AND MILLER, SENIOR JUDGE<sup>1</sup>.

TAYLOR, JUDGE: Marlon Dion Wilkerson brings this appeal from a November 5, 2002 Opinion and Order of the Fayette Circuit Court.

We affirm.

In 1998, appellant was indicted by the Fayette County Grand Jury for intentional murder, first degree burglary, first degree robbery, tampering with physical evidence and with being a second degree persistent felony offender. Following a jury

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<sup>1</sup> Senior Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

trial, appellant was found guilty of intentional murder, first degree burglary and first degree robbery. He was sentenced to life imprisonment without the possibility of parole for twenty five years. A direct appeal was taken to the Kentucky Supreme Court, which affirmed appellant's judgment of conviction in Appeal No. 1998-SC-001056-MR.

Thereafter, appellant filed a *pro se* motion to vacate judgment pursuant to Ky. R. Civ. P. (CR) 60.02(f). Appellant alleged the judgment of conviction should be vacated because he received ineffective assistance of appellate counsel. On November 5, 2002, the Fayette Circuit Court denied his motion. This appeal followed.

Appellant contends that the circuit court committed error by denying his CR 60.02 motion alleging ineffective assistance of appellate counsel. We disagree. We view the case of Lewis v. Commonwealth, Ky., 42 S.W.3d 605 (2001), as controlling. In Lewis, the Supreme Court held that "ineffective assistance of appellate counsel is not a cognizable issue in this jurisdiction." Id. at 614; Hicks v. Commonwealth, 825 S.W.2d 280 (1992). In this case, the Supreme Court has considered and decided the merits of the appeal. This Court will not examine anew any aspect of an appeal reviewed, considered and decided by the Supreme Court. Hicks at 281.

Accordingly, we are of the opinion that the circuit court properly denied appellant's CR 60.02 motion.

For the foregoing reasons, the Opinion and Order of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Richard Edwin Neal  
Assistant Public Advocate  
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler III  
Attorney General  
  
Courtney J. Hightower  
Assistant Attorney General  
Frankfort, Kentucky