

RENDERED: FEBRUARY 11, 2005; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2003-CA-000742-MR

STEPHEN PARRIS

APPELLANT

v. APPEAL FROM BULLITT CIRCUIT COURT
HONORABLE THOMAS L. WALLER, JUDGE
INDICTMENT NO. 99-CR-00085

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; DYCHE AND KNOPF, JUDGES.

KNOPF, JUDGE: Following a jury trial, Stephen Parris was convicted of fleeing or evading police in the first degree¹ and wanton endangerment in the first degree.² Parris waived sentencing by the jury and entered a conditional guilty plea to

¹ KRS 508.060.

² KRS 520.095.

being a persistent felony offender in the first degree.³ On April 24, 2001, the Bullitt Circuit Court entered a judgment sentencing Parris to a total of fifteen years' imprisonment. Subsequently, this Court affirmed Parris's conviction in an unpublished opinion.⁴ Thereafter, Parris filed a *pro se* CR 60.02 motion with the trial court, alleging that his conviction was procured through fraud or perjury. The trial court denied the motion without a hearing and without appointing counsel. Parris now appeals. Finding no error, we affirm.

The facts underlying the offenses for which Parris was convicted are fully set out in this Court's opinion in the direct appeal. For purposes of this appeal, it suffices to say that, on May 10, 1999, Kentucky State Trooper Robert Melton stopped a van being driven by Parris near Brooks, Kentucky. After Trooper Melton informed Parris that he was under arrest, Parris escaped from Trooper Melton's custody, returned to his van, and fled the scene. While Trooper Melton was attempting to prevent Parris from driving off, Trooper Melton was dragged by Parris's van for a short distance before he fell on to roadway. Parris then led

³ KRS 532.080.

⁴ Stephen Parris v. Commonwealth, No. 2001-CA-000919-MR (Not-to-be-published opinion rendered June 7, 2002. Motion for discretionary review denied by Supreme Court March 12, 2003).

police on a high-speed chase which ended when Parris crashed the van near downtown Louisville.

In his CR 60.02 motion, Parris alleged that Trooper Melton lied about being dragged by Parris's van. As a basis for this claim, Parris pointed to a television interview given by Trooper Melton shortly after the incident. Parris asserts that Trooper Melton's appearance in the interview was not consistent with his testimony that he was dragged by the van. He contends that the interview proves that Trooper Melton falsified his testimony at trial. Because the record did not conclusively refute these allegations, Parris argues that the trial court should have appointed counsel for him and conducted an evidentiary hearing.

CR 60.02(c), (d) and (f) allow a court to grant a party relief from a final judgment upon a showing of "perjury or falsified evidence", "fraud affecting the proceedings, other than perjury or falsified evidence", or "any other reason of an extraordinary nature justifying relief." CR 60.02 is meant to provide relief which is not available by direct appeal or under RCr 11.42.⁵ "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

⁵ Gross v. Commonwealth, 648 S.W.2d 853, 856 (Ky. 1983).

circumstances that justify CR 60.02 relief."⁶ Relief from judgment for "any other reason justifying relief" is not available unless asserted grounds for relief are not encompassed within any of the first five clauses of rule governing relief from judgment.⁷ Furthermore, the right to appointed counsel generally does not extend to CR 60.02 motions.⁸ The standard of review of an appeal involving a CR 60.02 motion is whether the trial court abused its discretion.⁹

The trial court did not abuse its discretion in denying Parris's motion without appointing counsel or conducting an evidentiary hearing. As an initial matter, the videotape of the television interview was not included in the record on appeal. Consequently, we cannot say that it would cast any serious doubt on the veracity of Trooper Melton's testimony. Moreover, even if Parris's assertions about Trooper Melton's appearance in the interview are taken as true, such evidence would not be conclusive proof that Trooper Melton's testimony was false. At most, the tape might contradict Trooper Melton's statements that he received minor scrapes and bruises after falling from the van.

⁶ Id. at 856.

⁷ McMurry v. McMurry, 957 S.W.2d 731 (Ky.App. 1997).

⁸ Gross at 857.

⁹ Brown v. Commonwealth, 932 S.W.2d 359, 361 (Ky. 1996).

And even if the tape cast some doubt on Trooper Melton's account that he was dragged a short distance by Parris's van, Parris has never offered any different version of the incident. Thus, the facts which Parris alleges would not justify relief from the judgment and no evidentiary hearing was necessary.

Parris also raises several claims of error involving the prosecutor's closing argument, ineffective assistance of counsel, and "cumulative error." Such claims reasonably could have been raised in the direct appeal or by RCr 11.42 proceedings and are not properly raised in a motion under CR 60.02.¹⁰ Therefore, we need not consider these arguments further.

Accordingly, the order of the Bullitt Circuit Court denying Parris's CR 60.02 motion is affirmed.

ALL CONCUR.

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¹⁰ McQueen v. Commonwealth, 948 S.W.2d 415, 416 (Ky. 1997).