

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2003-CA-000863-MR

RICKY WAYNE CUMMINS

APPELLANT

v. APPEAL FROM MERCER CIRCUIT COURT  
HONORABLE DARREN W. PECKLER, JUDGE  
ACTION NO. 84-CR-00038

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

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BEFORE: GUIDUGLI, McANULTY, AND MINTON, JUDGES.

McANULTY, JUDGE. Ricky Wayne Cummins (hereinafter appellant) appeals from the Mercer Circuit Court's denial of his CR 60.02 motion for relief from his conviction for rape in the first degree, sodomy in the first degree, kidnapping and three counts of being a persistent felony offender in the second degree. We affirm.

Appellant did not specify which ground under CR 60.02 he seeks to utilize, but he alleged that a sentencing error

occurred with the imposition of his sentence. While an allegedly unauthorized sentence may be corrected on a motion for post-conviction relief, Myers v. Commonwealth, Ky., 42 S.W.3d 594, 596 (2001), that motion must meet the requirement that it be timely under the Rule which authorizes it. CR 60.02 states that a motion pursuant to the Rule "shall be made within a reasonable time, and on grounds (a), (b), and (c) not more than one year after the judgment, order or proceeding was entered or taken."

The trial court denied the motion as not being timely. Appellant filed the present CR 60.02 motion approximately eighteen years after his judgment in 1984. Appellant provides no compelling reason for the long delay in seeking this relief. He previously sought relief from his conviction on direct appeal and by motions pursuant to RCr 11.42. Under any of the grounds for relief of CR 60.02, it can be seen that the motion was not timely filed. The requirement that a motion be brought within a reasonable time is a threshold to relief. Gross v. Commonwealth, Ky., 648 S.W.2d 853, 857 (1983). The trial court has discretion to determine whether the motion was timely. Id., at 858. This discretion was not misused in this case and so we affirm the trial court's dismissal.

Appellant further states that the trial court erred by not entering findings of fact and conclusions of law in this

action. The trial court denied appellant's motion on legal grounds, and there was no need of fact-finding. The court was not required to consider the merits of appellant's claim. The court entered its conclusions of law. Thus, there was no error.

We affirm the order of the Mercer Circuit Court which denied appellant's motion for relief from sentence pursuant to CR 60.02.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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