

RENDERED: JULY 30, 2004; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001579-MR

ROBERT LEROY FRANCIS

APPELLANT

v. APPEAL FROM CLARK CIRCUIT COURT
HONORABLE WILLIAM T. JENNINGS, JUDGE
ACTION NO. 89-CR-00025 & 89-CR-00033

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: JOHNSON AND TAYLOR, JUDGES; EMBERTON, SENIOR JUDGE.¹

EMBERTON, SENIOR JUDGE. Francis was convicted of murder, robbery first degree, and conspiracy to commit robbery first degree.

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Following an unsuccessful direct appeal to the Kentucky Supreme Court Francis, on May 3, 1994, filed a motion to vacate judgment pursuant to RCr² 11.42 and RCr 10.26. The motions were later dismissed at his request. On September 21, 1994, Francis filed a motion pursuant to CR³ 60.02. On October 19, 1994, he filed a notice of appeal stating he was appealing from the circuit court's dismissal of his RCr 11.42 motion. We dismissed the appeal because it was filed outside the time limitation imposed by RCr 12.04 and the Supreme Court denied Francis's motion for discretionary review. Francis then filed a supplement to his previously filed CR 60.02 motion. Both the CR 60.02 motion and the supplemental motion were subsequently denied. He appealed to this court and we affirmed holding that the issues raised in his CR 60.02 motion could have been brought in his RCr 11.42 motion.

On January 19, 2000, Francis filed a "Motion to Vacate Unlawful Judgment" and subsequently, a supplement to the motion. After the circuit court denied the motion, Francis again pursued an appeal to this court.

We consistently reject successive motions to vacate criminal judgments. As stated in Shepard v. Commonwealth:⁴

² Kentucky Rules of Criminal Procedure.

³ Kentucky Rules of Civil Procedure.

⁴ Ky., 477 S.W.2d 798 (1972).

These particular grounds of relief could have been raised in any of the three earlier motions to vacate. Appellant seems to believe that RCr 11.42 gives him the right to advance reasons for vacating the judgment one at a time in a series of motions that will allow him to command the attention of the courts in perpetuity. In this he is mistaken.

The arguments raised in Francis's latest motion should, or could have been, raised either on direct appeal or in his previous motions to vacate the judgment. We find no error in the trial court's summary denial of his motion.⁵

The judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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⁵ Francis's motion is also time-barred under RCr 11.42(10).