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## Commonwealth Of Kentucky

### Court of Appeals

NO. 2003-CA-001814-MR

WILLIAM JACOB BRUCE

APPELLANT

v. APPEAL FROM HOPKINS CIRCUIT COURT  
HONORABLE CHARLES W. BOTELEER, JR., JUDGE  
ACTION NO. 65-CR-20037

COMMONWEALTH OF KENTUCKY

APPELLEE

#### OPINION

#### AFFIRMING

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BEFORE: EMBERTON, CHIEF JUDGE; BARBER AND GUIDUGLI, JUDGES.

BARBER, JUDGE: William Jacob Bruce ("Bruce") appeals from an order of the Hopkins Circuit Court, entered June 9, 2003, that denied his motion for post-conviction relief filed pursuant to Kentucky Rules of Civil Procedure (CR) 60.02. Bruce also appeals from an order entered June 19, 2003, wherein the trial court denied his motion to alter, amend or vacate the June 9, 2003 order denying his CR 60.02 motion. We affirm.

On June 18, 1965, Bruce pulled a knife on his seventeen year old victim, ordered her to drive out into the countryside, raped her, forced her out of the vehicle, and returned her car to a parking lot. He was tried and convicted of rape and was given a twelve year sentence. His conviction was reversed on appeal. See Bruce v. Commonwealth, Ky., 418 S.W.2d 645 (1967). Bruce's second trial ended in a hung jury, and he was tried for a third time in 1968. At the third trial, Bruce was found guilty and received a sentence of life without benefit of parole. This conviction was affirmed on direct appeal. See Bruce v. Commonwealth, Ky., 441 S.W.2d 435 (1969).

Thereafter, Bruce began attacking his conviction. He has filed numerous motions pursuant to Kentucky Rules of Criminal Procedure (RCr) 11.42, petitions for writ of habeas corpus and one prior motion for CR 60.02 relief. A panel of this Court has already affirmed the trial court's denial of that prior motion for CR 60.02 relief. See Bruce v. Commonwealth, 2000-CA-001285-MR (not-to-be published opinion rendered May 4, 2001).

Our review of the record also reveals that, in 1979, Governor Julian Carroll commuted Bruce's sentence to life with parole, effectively releasing him from custody. After his release from prison, Bruce committed two more sexually related offenses in Indiana and Missouri. For the charge in Missouri,

Bruce was sentenced to thirty years in prison for kidnapping and fifty years in prison for raping a twelve year old girl. These sentences were ordered to run consecutively with each other and with the reinstated life sentence in Kentucky.

On May 14, 2003, Bruce filed his latest CR 60.02 motion. In this CR 60.02 motion, Bruce contends that his life sentence violates the equal protection clause of the Fourteenth Amendment to the United States Constitution since the statutory minimum punishment for rape has been reduced to twenty years imprisonment. Additionally, Bruce alleges that his life sentence violates the Eighth Amendment's guarantee against cruel and unusual punishment since the statutory minimum sentence was changed to twenty years. The trial court rejected these arguments and denied his CR 60.02 motion on June 9, 2003. Bruce immediately filed a motion to alter, amend or vacate this judgment. The trial court denied this motion on June 19, 2003. This appeal followed.

On appeal, Bruce asserts that the trial court erred in finding that he was not entitled to relief under CR 60.02. In support of this assertion, Bruce submits the same arguments that he unsuccessfully presented to the trial court. We find Bruce's arguments to be completely without merit.

In Gross v. Commonwealth, Ky., 648 S.W.2d 853 (1983), the Kentucky Supreme Court established the procedure for

appellate review in criminal cases. The Supreme Court stated that the structure for appellate review is not haphazard or overlapping. Id., at 856. A criminal defendant must first bring a direct appeal when available, then utilize RCr 11.42 by raising every error of which he should be aware. Id. CR 60.02 should be utilized only for extraordinary situations not subject to relief by direct appeal or by way of RCr 11.42. Id. The Supreme Court reaffirmed the procedural requirements set out in Gross in its opinion in McQueen v. Commonwealth, Ky., 948 S.W.2d 415 (1997):

A defendant who is in custody under sentence or on probation, parole or conditional discharge, is required to avail himself of RCr 11.42 as to any ground of which he is aware, or should be aware, during the period when the remedy is available to him. Civil Rule 60.02 is not intended merely as an additional opportunity to relitigate the same issues which could "reasonably have been presented" by direct appeal or RCr 11.42 proceedings. RCr 11.42(2); Gross v. Commonwealth, supra, at 855, 856. The obvious purpose of this principle is to prevent the relitigation of issues which either were or could have been litigated in a similar proceeding.

Id., at 416.

Here, the focal point of Bruce's argument is that his sentence of life imprisonment for rape is not in conformity with current sentencing guidelines. A review of the record reveals that Bruce has presented these same arguments several times

before. In fact, in 2001, a panel of this Court noted that Bruce "makes no argument that has not already been addressed in his many previous post-conviction [sic] actions." See Bruce v. Commonwealth, 2000-CA-001285-MR, at 2 (not-to-be published opinion rendered May 4, 2001). Since Bruce has unsuccessfully presented these arguments in prior post-conviction proceedings, Bruce is barred from raising these issues again by way of another CR 60.02 motion. Thus, the trial court did not err in denying Bruce's CR 60.02 motion.

Additionally, Bruce failed to exercise due diligence in pursuing his claims. Under CR 60.02, a motion must be filed within a reasonable time if the motion is based upon an extraordinary reason justifying the relief sought. Here, Bruce waited approximately 35 years to file this CR 60.02 motion with the trial court. We believe that 35 years after judgment is not a reasonable time to file a CR 60.02 motion. Therefore, the trial court did not abuse its discretion in denying this CR 60.02 motion.

Finally, in addition to the procedural bar, we note that the arguments Bruce presents to us herein are completely without merit under Kentucky law. In Land v. Commonwealth, 986 S.W.2d 440 (1999), the Kentucky Supreme Court held that a sentence of life without the possibility of parole, imposed as a result of a conviction for rape, under the law in effect at the

time of the conviction, did not amount to cruel and unusual punishment or denied equal protection and due process under the federal constitution, despite changes in the sentencing laws. In light of our Supreme Court's ruling in Land, it is apparent that, even if we addressed the arguments presented in this appeal, Bruce would simply be unable to present any facts of an extraordinary nature that would justify post-conviction relief.

For the aforementioned reasons, the judgment of the Hopkins Circuit Court is affirmed.

ALL CONCUR.

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