

RENDERED: DECEMBER 29, 2005; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002637-MR

GEORGE RUSSELL ABNEY, SR.

APPELLANT

v. APPEAL FROM EDMONSON CIRCUIT COURT
HONORABLE RONNIE C. DORTCH, JUDGE
ACTION NO. 98-CR-00037

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: DYCHE AND SCHRODER, JUDGES; ROSENBLUM, SENIOR JUDGE.¹

DYCHE, JUDGE: In May 1998, the mobile home of Gina Abney's parents burned after someone poured gasoline around it and set it on fire. George Abney, Sr., Gina's estranged husband, was suspected of committing arson. Several months later, Scotty

¹ Senior Status Judge Paul W. Rosenblum sitting as Special Judge by Assignment of the Chief Justice pursuant to Section 110 (5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

Karnes, incarcerated on an unrelated matter, stated that appellant had hired Karnes and George Abney, Jr., to burn the residence. All three men were indicted.

A plea agreement was reached with appellant. He entered a guilty but mentally ill plea to second degree arson, and he agreed to pay \$25,000 in restitution to his former in-laws. Karnes was granted immunity and testified versus George Abney, Jr., who was acquitted.

Appellant did not seek direct appeal from his 1999 conviction. However, he has filed the following post-conviction motions: RCr 11.42 motion (filed in November 2000, denied that same year, affirmed by this Court in 2001, motion for discretionary review denied by the Kentucky Supreme Court); CR 60.02 motion (November 2002); petition for writ of habeas corpus in the United States District Court, Western District of Kentucky (denied September 2003); RCr 10.26 motion for new trial (denied December 2003); the within CR 60.03 and 61.02 motion (filed in December 2003, denied January 2004); and a second RCr 11.42 motion (filed in September 2004, denied November 2004).

In this appeal, Abney contends that the trial court erred in denying relief because he was denied ineffective assistance of counsel (no representation at sentencing, denied right to withdraw guilty plea); because there was a breach of his plea agreement (the charges against George Abney, Jr., were

not dismissed); and because he was the lone conspirator convicted of the three.

The Commonwealth urges that the Edmonson Circuit Court order should be affirmed, and we agree. Abney has litigated all these issues in his previous post-conviction motions and petitions in various trial and appellate courts. He is thus procedurally barred from being heard again.

Commonwealth v. Tammé, 83 S.W.3d 465, 468 (Ky. 2002).

The Commonwealth's motion to dismiss is denied as moot.

The order of the Edmonson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

George Russell Abney, Sr.
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Burgin, Kentucky

BRIEF FOR APPELLEE:

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