

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001232-MR
AND
NO. 2004-CA-002048-MR

CHARLES HELTON

APPELLANT

v. APPEAL FROM PULASKI CIRCUIT COURT
HONORABLE ROBERT E. GILLUM, JUDGE
ACTION NO. 82-CR-00061 AND
ACTION NO. 82-CR-00121

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DYCHE, GUIDUGLI, AND TACKETT, JUDGES.

TACKETT, JUDGE: Charles Helton appeals from the denial of his motion under Kentucky Rule of Civil Procedure (CR) 60.02 for extraordinary relief from his life sentence for two counts of first-degree rape. The Pulaski Circuit Court summarily denied his motion for relief. Helton, pro se, appeals, arguing that he is entitled to relief because he was sedated for over twenty

years and not competent to raise these claims until recently. He claims that evidence of two doctors' reports which would show that the child victims had not been sexually active in 1978 or 1979 had been concealed from him at the time of trial. We disagree that he is entitled to relief on this basis.

The Commonwealth correctly points out that this "evidence" is only purported to exist, and its content, if it does exist, would at best only be collateral and somewhat impeaching. Also, Helton sought this same evidence through a motion in 1989, and was unsuccessful then.

The rule under which Helton seeks relief, CR 60.02, requires that the motion be made within a reasonable time. Helton's allegation that he was under sedation for over 20 years and was incompetent to raise these grounds is clearly contradicted by the record, which reveals that he has requested many times for relief from his conviction, both on direct appeal and on collateral attack, both at the state and federal level. There is nothing new about this alleged evidence, and there is nothing to indicate that Helton was unaware of its existence prior to the present time. Indeed, as previously indicated, he sought this same evidence sixteen years ago. This motion was, therefore, not brought within a reasonable time, and was correctly denied without a hearing by the circuit court.

For the foregoing reasons, the judgment of the Pulaski
Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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