

RENDERED: SEPTEMBER 23, 2005; 2:00 P.M.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2004-CA-001417-MR

MIQUEL DWYNE SHEARER<sup>1</sup>

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE MARY C. NOBLE, JUDGE  
ACTION NO. 93-CR-00111

COMMONWEALTH OF KENTUCKY

APPELLEE

### OPINION AFFIRMING

\*\* \*\* \* \* \*

BEFORE: GUIDUGLI, JOHNSON, AND McANULTY, JUDGES.

McANULTY, JUDGE: Miquel Shearer (Shearer) appeals the order of the Fayette Circuit Court denying his motion for relief from judgment under CR 60.03. He requests on appeal that we grant him equitable relief by removing two or three years off his sentence. Because we conclude that Shearer's claims are unsupported and time-barred, and the trial court was without jurisdiction to amend the judgment, we affirm.

---

<sup>1</sup> The Notice of Appeal lists Appellant's name as Miguel Dwyne Shearer, however, the actual spelling is "Miquel" Dwyne Shearer.

In February of 1993, Shearer was indicted by a Fayette County Grand Jury for trafficking in a controlled substance in the first degree while being a persistent felony offender in the first degree. The charges followed a "buy-bust" operation with the help of a police informant. The jury found Shearer guilty of trafficking in a controlled substance in the first degree. The jury recommended a sentence of 10 years, found him guilty of being a persistent felony offender in the first degree and recommended an enhanced sentence of 20 years. In September of 1993, he was sentenced to 20 years.

Before the trial court had even sentenced Shearer, however, he filed a combined RCr 11.42 and CR 60.02 motion to vacate these convictions. The trial court denied the motion as untimely. In September of 1993, after judgment was entered, he re-filed his motion. On January 10, 1994, the trial court granted the Commonwealth's motion to hold the motion in abeyance pending the outcome of Shearer's appeal to the Kentucky Supreme Court. On January 26, 1994, Shearer filed a pro se Petition for Writ of Mandamus attempting to force a ruling on his motion. On April 21, 1994, that petition was denied. He responded by filing a second pro se Petition for Writ of Mandamus with this Court, which was denied in August of 1994.

In May of 1994, the Kentucky Supreme Court affirmed his convictions. On September 21, 1994, the trial court denied

the combined RCr 11.42 and CR 60.02 motion. He appealed that decision to this Court. On July 5, 1996, this Court affirmed, (1994-CA-002430-MR). On February 20, 1997, the Kentucky Supreme Court denied discretionary review.

Pending the aforementioned appeals, Shearer filed three further collateral attack actions in the trial court. The first in August of 1993, was styled a Substantial Error Motion pursuant to RCr 10.26 to vacate the convictions. That motion was denied in September of 1993. A subsequent Substantial Error Motion, pursuant to RCr 10.26, was filed in November of 1994 and denied in January of 1995. A third Substantial Error Motion, pursuant to RCr 10.26 was filed on August 12, 1996, and denied on August 21, 1996. He appealed the denial of the third motion to this Court, which a panel of this Court affirmed, (1996-CA-002453-MR). In June of 1999, the Kentucky Supreme Court denied his motion for enlargement of time to seek discretionary review.

Shearer has also challenged his convictions in federal court. He filed three federal petitions for writs of habeas corpus, all dismissed by the United States District Court.

On June 9, 2004, Shearer filed the present motion to vacate under CR 60.03, asserting a single claim of newly discovered evidence. Shearer alleges that the Fayette County Police Department's informant was in breach of his Probation and Parole Contract with the Commonwealth and that breach denied

Shearer a fair trial. On June 22, 2004, the Fayette Circuit Court summarily denied his motion to vacate. Shearer appeals that order.

On appeal, Shearer argues that the newly discovered evidence proves he was denied a fair trial. And he claims that he has demonstrated substantial error, harmful error, abuse, fraud, misconduct, perjury and tampering. Although he raises these claims, he does not pursue them or provide any further argument in support. Shearer believes that the least this Court can do to remedy the alleged injustices is cut time off his sentence.

The Commonwealth responds that the trial court did not err in denying Shearer's CR 60.03 motion because (1) the trial court lacked jurisdiction to amend the judgment; (2) his motion was not timely filed; and (3) his claims are not a proper basis for relief. Additionally, the Commonwealth contends that Shearer does not satisfy his burden of establishing support for his claim.

Shearer's CR 60.03 motion is more properly construed as a motion under CR 60.02 because it is not truly an independent action as CR 60.03 contemplates. Instead, Shearer filed this motion as a part of the original case against him. In any event, CR 60.03 permits an independent action for relief from a judgment on appropriate equitable grounds. Claimants

seeking equitable relief must *establish* a recognized ground for the relief. See Bowling v. Commonwealth, 163 S.W.3d 361, 365 (Ky. 2005).

Shearer alleges fraud in the underlying proceedings, and fraud is a recognized ground. See id. But Shearer has simply not established or supported his claim.

The evidence Shearer produces is a blank contract of probation form, not the informant's contract of probation. Shearer argues that although he does not produce the informant's specific contract, the informant would have been required to sign the same contract. The blank form has no indication that the informant signed anything similar and the form lacks any indication of when it was adopted for use by the Commonwealth of Kentucky.

Notwithstanding our conclusion that Shearer's claims are unsupported, to the extent that the fraud claim is based on perjury and tampering, it is barred because the ground of relief sought would be barred under the one-year statute of limitations contained in CR 60.02. See CR 60.03; CR 60.02; and Copley v. Whitaker, 609 S.W.2d 940, 942 (Ky.App. 1980). In addition, claims based on newly discovered evidence are also barred by the one-year statute of limitations. See CR 60.02.

Finally, in this case, the trial court lacked jurisdiction to amend the final judgment because Shearer brought

his motion to amend almost eleven years after the judgment was entered. Under CR 59.05, the jurisdiction of a trial court to amend the final judgment is limited to ten days after entry of the judgment. See Silverberg v. Commonwealth, 587 S.W.2d 241, 244 (Ky. 1979).

For the foregoing reasons, we affirm the order of the Fayette Circuit Court denying Shearer's CR 60.03 motion.

ALL CONCUR.

BRIEF FOR APPELLANT:

Miquel Dwyne Shearer, Pro Se  
West Liberty, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo  
Attorney General of Kentucky

Carlton S. Shier, IV  
Assistant Attorney General  
Frankfort, Kentucky