

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-002223-MR

DARRELL REYNOLDS

APPELLANT

v. APPEAL FROM LAUREL CIRCUIT COURT
HONORABLE RODERICK MESSER, JUDGE
ACTION NO. 91-CR-00125

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; JOHNSON AND McANULTY, JUDGES.

McANULTY, JUDGE: Darrell Reynolds (hereinafter appellant)

brings this appeal from the denial of his CR 60.02 motion on the ground that it was not brought within a reasonable time.

Appellant was convicted of rape in the first degree in 1994, and his conviction was affirmed by the Kentucky Supreme Court on direct appeal in October of 1995. Since then appellant has filed multiple motions pursuant to RCr 11.42 and CR 60.02 seeking to vacate his judgment and sentence.

CR 60.02 states that the motion will be made within a reasonable time. Appellant attempts to circumvent the reasonable time requirement by citing a case that was decided by the United States Supreme Court last year as the basis for his motion, Crawford v. Washington, 541 U.S. 36, 158 L. Ed. 2d 177, 124 S. Ct. 1354 (2004). As the Commonwealth accurately points out, the case appellant cites has no application to the facts of his case. In fact, it appears that this is the second time that appellant has cited a recent case from the United States Supreme Court as grounds for a CR 60.02 motion, and in neither instance has the case been on point, much less an adequate ground which would entitle appellant to relief. CR 60.02 is not to be used merely as an additional opportunity to relitigate the same issues that could reasonably have been presented on direct appeal or through RCr 11.42 proceedings. McQueen v. Commonwealth, 948 S.W.2d 415, 416 (Ky. 1997).

For the foregoing reasons, we affirm the trial court's dismissal of the CR 60.02 motion as untimely.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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