

RENDERED: May 5, 2006; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-002361-MR

WILLIAM HELTZEL

APPELLANT

v. APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE JANET P. COLEMAN, JUDGE
ACTION NO. 02-CR-00518

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: GUIDUGLI AND TAYLOR, JUDGES; EMBERTON, SENIOR JUDGE.¹

TAYLOR, JUDGE: William Heltzel brings this *pro se* appeal from an October 7, 2004, order of the Hardin Circuit Court denying his motion to vacate fine under Ky. R. Civ. P. (CR) 60.03. We affirm.

The facts of this case are rather straightforward. On November 27, 2002, appellant was indicted by the Hardin County Grand Jury for first-degree rape. In September 2003, a plea

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

agreement was reached with the Commonwealth that was subsequently rejected by the circuit court. In May 2004, a second plea agreement was reached that was satisfactory with the circuit court. On June 30, 2004, appellant entered a guilty plea to third-degree rape and was sentenced to two years' imprisonment. The court also imposed a fine of one thousand dollars (\$1,000.00) to be paid within ninety (90) days from his release from incarceration. No direct appeal was taken from this judgment. On August 30, 2004, appellant filed a motion to vacate fine under CR 60.03. Therein, appellant contends the circuit court lacked authority to impose the fine under the plea agreement with the Commonwealth and that the fine was arbitrary. On October 7, 2004, the circuit court entered an order denying appellant's CR 60.03 motion. This appeal follows.

Appellant contends the circuit court committed error by denying his CR 60.03 motion to vacate fine. We disagree. CR 60.03 permits the institution of an independent action to attack a judgment on "appropriate equitable grounds." CR 60.03 is not a substitute for a direct appeal. In this case, appellant is attempting to attack the validity of the fine imposed by the court in the June 30, 2004, judgment. Essentially, appellant is arguing that the circuit court erred as a matter of law in imposing the fine. CR 60.03 is not the proper remedy to attack the validity of the fine; rather, appellant should have filed a

direct appeal from the June 30, 2004, judgment. Accordingly, we summarily affirm the circuit court's denial of appellant's CR 60.03 motion.

For the foregoing reasons, the order of the Hardin Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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