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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000102-MR

GEORGE McGINNIS, JR. APPELLANT

v.

APPEAL FROM McCRACKEN CIRCUIT COURT
HONORABLE R. JEFFREY HINES, JUDGE
ACTION NO. 87-CR-00015

COMMONWEALTH OF KENTUCKY APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: GUIDUGLI, KNOPF, AND McANULTY, JUDGES.

McANULTY, JUDGE: In this pro se appeal under CR 60.02, George McGinnis, Jr. (George) raises a number of challenges to his 1987 convictions for first-degree rape (two counts), first-degree sodomy (two counts) and kidnapping for which he received a 70 year sentence. The trial court denied his motion in the underlying proceedings, precipitating this appeal. His challenges are that: (1) in conducting the trial within two and a half months of his criminal acts, the trial court may have inadvertently rendered his counsel ineffective; and (2) the

trial court erred by allowing the prosecution to shift the burden of proof to the defense. He further claims that these errors occurred before and during his trial, but he has just now detected them and could not have raised them in his earlier post-conviction challenges. Finally, George argues that he was entitled to the appointment of counsel and a hearing on his CR 60.02 motion. Because we conclude that the trial court did not abuse its discretion in denying George's CR 60.02 motion, we affirm.

As acknowledged by George, he has filed two other post-conviction challenges in an attempt to overturn his conviction. First, George filed a direct appeal before the Kentucky Supreme Court. In that appeal, he argued that: (1) KRS 532.055 is unconstitutional; (2) the trial court erred in denying his motion for a continuance; and (3) he was prejudiced by impeachment with the fact of his conviction of a prior felony. The Kentucky Supreme Court reviewed his claims, but found no error. It affirmed the judgment of conviction in an unpublished opinion rendered November 5, 1987 (87-SC-381-MR).

Second, in addition to the direct attack on the judgment of conviction, George filed a collateral attack under RCr 11.42 on March 1, 1989. In that motion, he alleged that his counsel was ineffective in failing to file a change of venue motion, failing to inform the court that jurors were heard

discussing the case during recesses, and failing to impeach the credibility of the two victims. The trial court denied his motion for relief. George appealed the denial, and a panel of this Court affirmed the trial court's judgment in an unpublished opinion (89-CA-1097-MR). And the Kentucky Supreme Court denied discretionary review (90-SC-318-D).

Fourteen years after the Kentucky Supreme Court denied George's motion for discretionary review, George filed this collateral attack under CR 60.02 (e) and (f). Actions under CR 60.02 are addressed to the sound discretion of the trial court. See Brown v. Commonwealth, 932 S.W.2d 359, 362 (Ky. 1996). Thus, our standard of review is abuse of discretion. See id.

CR 60.02 is for relief that is not available by direct appeal and not available collaterally under RCr 11.42. See Gross v. Commonwealth, 648 S.W.2d 853, 856 (Ky. 1983). In other words, the rule is not intended to afford individuals an additional opportunity to (1) relitigate issues that have already been presented in an earlier direct appeal or collateral attack or (2) present new issues that could have been raised in those proceedings. See id.; McQueen v. Commonwealth, 948 S.W.2d 415, 416 (Ky. 1997); RCr 11.42(3). And CR 60.02 should only be used to provide relief when the movant demonstrates why he or she is entitled to the special, extraordinary relief provided by the rule. See Gross, 648 S.W.2d at 856.

Having reviewed George's arguments, we conclude that they have either already been addressed and rejected in his direct and collateral attacks, or George could have and should have raised these arguments in those proceedings. In short, George has not demonstrated any facts or circumstances, which if true, would entitle him to the special, extraordinary relief provided by CR 60.02. And because he did not allege any facts or circumstances justifying relief under CR 60.02, he was not entitled to an evidentiary hearing, nor was he entitled to appointed counsel. See Gross, 648 S.W.2d at 856-857.

We affirm the order of the McCracken Circuit Court that denied George relief under CR 60.02.

ALL CONCUR.

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