

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000198-MR

RODNEY GRIMES

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE GEOFFREY P. MORRIS, JUDGE
ACTION NO. 95-CR-001675

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: TACKETT, TAYLOR, AND VANMETER, JUDGES.

TACKETT, JUDGE: Rodney Grimes appeals from the order of the Jefferson Circuit Court denying his post-conviction motion for relief from a judgment under Kentucky Rule of Civil Procedure (CR) 60.02. The circuit court denied the motion as untimely. Grimes argues that the court should have conducted an evidentiary hearing. We disagree, and affirm.

Grimes entered a guilty plea to murder in exchange for a twenty-five year sentence in September 1995. In October 1996,

Grimes filed a motion under Kentucky Rule of Criminal Procedure (RCr) 11.42 to vacate the judgment, which was summarily denied as untimely. This Court affirmed that denial. Years later, in November 2004, Grimes filed this present action seeking the same relief under CR 60.02. The circuit court summarily denied the motion as untimely and as improper.

Under Gross v. Commonwealth, 648 S.W.2d 853 (Ky. 1983), it is procedurally improper to file two successive post-conviction motions, as all issues that could reasonably have been presented under RCr 11.42 are foreclosed from being raised under CR 60.02. See also Alvey v. Commonwealth, 648 S.W.2d 858 (Ky. 1983). The circuit court correctly denied the motion.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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