

RENDERED: DECEMBER 22, 2006; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2005-CA-001082-MR

GREGORY CHAPA

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT  
HONORABLE DOUGLAS M. STEPHENS, JUDGE  
ACTION NO. 97-CR-00512

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ABRAMSON AND GUIDUGLI, JUDGES; BUCKINGHAM,<sup>1</sup> SENIOR JUDGE.

BUCKINGHAM, SENIOR JUDGE: Gregory Chapa appeals from an order of the Kenton Circuit Court denying his motion to vacate his conviction and sentence pursuant to Kentucky Rules of Civil Procedure (CR) 60.02. We affirm.

In a judgment entered by the circuit court on October 28, 1998, Chapa was sentenced to six years in prison for theft

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<sup>1</sup> Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

by unlawful taking over \$300 and second-degree persistent felony offender. The court sentenced Chapa pursuant to a plea agreement he had with the Commonwealth and pursuant to his guilty plea. On October 25, 2002, the court denied Chapa's motion to vacate the judgment pursuant to Kentucky Rules of Criminal Procedure (RCr) 11.42.

On March 7, 2005, Chapa filed a motion to vacate the judgment pursuant to CR 60.02. The court denied the motion, stating that Chapa had not raised sufficient grounds because those grounds were either raised or should have been raised by Chapa in his RCr 11.42 motion. This appeal by Chapa followed.

Chapa argues that the court erred in not granting him relief because his guilty plea was not entered knowingly and voluntarily and because he received the ineffective assistance of counsel. As to the first argument, Chapa states that he was not in an "adequate state of mind" when he entered his guilty plea because he was on psychiatric medication. As to the second argument, he argues that his counsel rendered ineffective assistance because counsel advised him to take the plea offer by the Commonwealth even though the Commonwealth could not prove the PFO charge and because counsel did not advise the court that Chapa was on psychiatric medication when he entered his plea.

"CR 60.02 is not a separate avenue of appeal to be pursued in addition to other remedies, but is available only to

raise issues which cannot be raised in other proceedings.”  
McQueen v. Commonwealth, 948 S.W.2d 415, 416 (Ky. 1997). “It is  
for relief that is not available by direct appeal and not  
available under RCr 11.42.” Gross v. Commonwealth, 648 S.W.2d  
853, 856 (Ky. 1983). “The obvious purpose of this principle is  
to prevent the relitigation of issues which either were or could  
have been litigated in a similar proceeding.” McQueen, supra.

Chapa clearly raised the ineffective assistance of  
counsel argument in his RCr 11.42 motion and was thus precluded  
from raising it in a CR 60.02 motion. As for his knowing and  
voluntary guilty plea argument, it could likewise have been  
raised in Chapa’s RCr 11.42 motion. Thus, he was precluded from  
raising it in his CR 60.02 motion.

The order of the Kenton Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Gregory Chapa  
Eddyville, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo  
Attorney General of Kentucky

Courtney J. Hightower  
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Frankfort, Kentucky