

RENDERED: MARCH 24, 2006; 2:00 P.M.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2005-CA-001441-MR

WILLIAM HARRY MEECE

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE GARY D. PAYNE, JUDGE  
ACTION NO. 02-CR-01355

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: GUIDUGLI AND TAYLOR, JUDGES; EMBERTON, SENIOR JUDGE.<sup>1</sup>

GUIDUGLI, JUDGE: William Meece appeals from an order of the Fayette Circuit Court denying his motion for CR 60.02 relief. Meece argued that the Commonwealth improperly withheld and destroyed certain evidence prior to trial, resulting in the denial of his due process rights. For the reasons stated below, we affirm the order on appeal.

On June 2, 2003, Meece's jury trial commenced in Fayette Circuit Court on an indictment charging one count of

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<sup>1</sup> 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 KRS 21.580.

criminal conspiracy to commit murder. The charge arose from a police investigation which produced evidence that Meece accepted an offer to kill the boyfriend of Georgia Rhodes for \$2000. Meece acknowledge that he received a \$500 advance payment and agreed to commit the crime, but maintained that he was intoxicated when he accepted the offer and never intended to follow through on the murder.

At trial, the Commonwealth produced the testimony of Rhodes and police Sergeants Gerald Wilson and Dennis Benningfield. Meece testified in his own defense, and one additional defense witness was called. Upon hearing the proof, the jury returned a guilty verdict on the charge, and the judge accepted the jury's recommended sentence of 12 years in prison.

Meece prosecuted an appeal to this Court, and on September 24, 2004, this Court rendered a not-to-be-published opinion affirming the judgment of conviction.<sup>2</sup> Thereafter, the Kentucky Supreme Court denied discretionary review.

On May 27, 2005, Meece filed a pro se CR 60.02 motion, which forms the basis of the instant appeal. Meece argued before the circuit court that the Commonwealth improperly withheld "impeaching and exculpatory evidence" before and during the trial proceeding. Specifically, Meece argued that one of three tape recorded interviews made by Rhodes in the presence of

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<sup>2</sup> Appeal No. 2003-CA-001683-MR.

the Kentucky State Police was incorrectly found to be inaudible by KSP and the Commonwealth and was improperly destroyed. He also contended that the Commonwealth failed to provide other material including a statement made by his former wife, Regina Meade, and reports relating to an alleged 1994 attempt to entrap him in a similar conspiracy. On June 7, 2005, the circuit court entered an order denying the relief sought, upon finding that Meece presented no basis for the extraordinary relief sought. This appeal followed.

Meece now argues, pro se, that the circuit court committed reversible error in denying the motion for CR 60.02 relief, and erred in failing to appoint counsel and conduct a hearing on the motion. He contends the court erred by determining that 1) the relief sought is not "extraordinary" in nature and that the circuit court erred in failing to so rule; and 2) by not finding his claim of entitlement to relief "should be presumed true" and "would certainly result in a different outcome at trial". Though he does not make specific arguments as to why he is entitled to CR 60.02 relief, we will address the primary contention raised before the circuit court, to wit, that the inaudible Rhodes interview was improperly destroyed and that it entitles him to relief from judgment.

CR 60.02 states,

On motion a court may, upon such terms as are just, relieve a party or his legal representative from its final judgment, order, or proceeding upon the following grounds: (a) mistake, inadvertence, surprise or excusable neglect; (b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59.02; (c) perjury or falsified evidence; (d) fraud affecting the proceedings, other than perjury or falsified evidence; (e) the judgment is void, or has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (f) any other reason of an extraordinary nature justifying relief.

CR 60.02 "allows a judgment to be corrected or vacated based 'upon facts or grounds, not appearing on the face of the record and not available by appeal or otherwise, which were not discovered until after rendition of judgment without fault of the parties seeking relief.'"<sup>3</sup> "In order to be eligible for CR 60.02 relief, the movant must demonstrate why he is entitled to this special, extraordinary relief."<sup>4</sup>

Meece's claims of error are not persuasive. He states that his counsel received a copy of the Rhodes interview before trial, and counsel found it to be inaudible.<sup>5</sup> As such, any claim

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<sup>3</sup> Barnett v. Commonwealth, 979 S.W.2d 98, 101 (Ky. 1998), citing Davis v. Home Indemnity Company, 659 S.W.2d 185, 188 (Ky. 1983).

<sup>4</sup> Barnett, 979 S.W.2d at 101, citing Gross v. Commonwealth, 648 S.W.2d 853, 856 (Ky. 1983).

<sup>5</sup> No evidence of the tape's existence, nor its condition, is found in the appellate record.

of error relating to the tape should have been raised, if at all, at trial or as part of Meece's original appeal.<sup>6</sup>

Even if the issue was properly raised via CR 60.02, Meece has not met his burden of proving that it entitles him to the extraordinary relief of CR 60.02(f). Contrary to Meece's claim, there is no presumption of entitlement to relief; rather, the burden rests with him to prove entitlement to relief, or in the alternative offer some showing that a hearing on the issue is justified.<sup>7</sup>

Meece states that the tape was inaudible, and this fact alone negates any argument as to its alleged usefulness at trial. Even if the tape were audible, Meece has not demonstrated why it would entitle him to relief, and it was on this basis that the circuit court properly denied his motion. Similarly, the purported taped conversation with Meece's former wife and evidence of an alleged 1994 police "conspiracy" to entrap Meece do not bolster Meece's CR 60.02 argument.

Lastly, Meece argues that he should have received a hearing on the motion and the appointment of counsel. He maintains that without the benefit of a hearing it was impossible for the circuit court to determine if the Rhodes tape, his former wife's interview, and evidence of the alleged

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<sup>6</sup> Barnett, 979 S.W.2d at 101.

<sup>7</sup> Id.

1994 police conspiracy would have resulted in a jury verdict of not guilty.

Before a movant is entitled to an evidentiary hearing on a CR 60.02 motion, "he must affirmatively alleged facts which, if true, justify vacating the judgment."<sup>8</sup> While Meece has made broad statements claiming entitlement to CR 60.02 relief, he has not alleged any specific facts justifying vacating the judgment. As such, the circuit court did not err in denying his request for a hearing and appointment of counsel.

For the foregoing reasons, we affirm the order of the Fayette Circuit Court denying Meece's motion for CR 60.02 relief from judgment.

ALL CONCUR.

BRIEF FOR APPELLANT:

William Harry Meece, pro se  
West Liberty, KY

BRIEF FOR APPELLEE:

Gregory D. Stumbo  
Attorney General of Kentucky

Louis F. Mathias, Jr.  
Assistant Attorney General  
Frankfort, KY

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<sup>8</sup> Gross, 648 S.W.2d at 856.