

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2005-CA-001524-MR

ANTHONY W. DAVIDSON

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE ANN O'MALLEY SHAKE, JUDGE  
ACTION NO. 92-CR-002072

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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

BUCKINGHAM, SENIOR JUDGE: Anthony Wendell Davidson was convicted in the Jefferson Circuit Court of the murder of Catherine Denise Johnson and of the sexual abuse of Johnson's 11-year-old daughter. As a result, he was sentenced to life without parole for 25 years. He now appeals the trial court's order denying his motion for relief from the judgment or in the

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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.

alternative resentencing, which he filed pursuant to CR<sup>2</sup> 60.02. We affirm.

A Jefferson County grand jury indicted Davidson in September 1992, charging him with capital offense murder, first-degree burglary, first-degree rape, first-degree sodomy, and first-degree sexual abuse. The indictment alleged that on February 5, 1992, Davidson broke into Catherine Denise Johnson's apartment and stabbed her to death. The indictment also alleged that on September 13, 1990, Davidson raped, sodomized, and sexually abused Johnson's 11-year-old daughter.

On February 25, 1993, Davidson entered into a signed plea agreement with the Commonwealth and pled guilty to the offenses specified in the indictment. On April 8, 1993, Davidson reappeared before the court and was sentenced to life without parole for 25 years for murder. He was also sentenced to terms of imprisonment on the other offenses, and those sentences were ordered to run concurrently with the sentence for murder.

In September 1997, Davidson filed a motion to vacate the judgment pursuant to RCr<sup>3</sup> 11.42. He alleged the ineffective assistance of counsel during the guilty plea proceedings. The

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<sup>2</sup> Kentucky Rules of Civil Procedure.

<sup>3</sup> Kentucky Rules of Criminal Procedure.

court denied the motion, and Davidson's appeal to this court was dismissed.

In May 2005, Davidson filed his CR 60.02 motion. In an order entered on June 10, 2005, the court denied the motion on the grounds that it was not filed within a reasonable time as required by the rule and that the motion improperly raised issues that could have been presented by Davidson in his 1997 RCr 11.42 motion. This appeal followed.

CR 60.02 states that "[t]he motion shall be made within a reasonable time, and on grounds (a), (b), and (c) not more than one year after the judgment, order, or proceeding was entered or taken." Davidson filed his motion 12 years after the final judgment sentencing him for the crimes. "What constitutes a reasonable time in which to move to vacate a judgment under CR 60.02 is a matter that addresses itself to the discretion of the trial court." Gross v. Commonwealth of Kentucky, 648 S.W.2d 853, 858 (Ky. 1983). We conclude the court did not abuse its discretion in denying the motion on the ground it was not brought within a reasonable time following the entry of the final judgment.

Davidson's complaint in his motion is that the court did not specifically find the presence of an aggravating circumstance when it sentenced him to life without parole for 25 years. He notes that the court was required to do so before

imposing that sentence. See KRS<sup>4</sup> 532.025(3). By virtue of his guilty plea for the crime of first-degree burglary, Davidson admitted the presence of an aggravating circumstance. See KRS 532.025(2)(a)2. Furthermore, as noted by the trial court, this was an argument that could have been raised by Davidson in his RCr 11.42 motion. Therefore, pursuant to the Gross case, he was precluded from raising the issue in a CR 60.02 motion. See Gross, 648 S.W.2d at 856.

Davidson also argues that the Commonwealth failed to give him notice that it would seek a sentence of life without parole for 25 years or death due to aggravating circumstances. That assertion is incorrect. See Volume II of the record, pages 152-53.

Davidson also claims error on the ground that no bifurcated proceeding was held. This assertion is also incorrect. The record reflects that Davidson pled guilty on February 25, 1993, and was sentenced in a separate proceeding on April 8, 1993. Furthermore, the statute upon which Davidson relies, KRS 532.025(1)(a), appears not to apply in this case because the death penalty was not going to be imposed in light of the plea agreement.

The order of the Jefferson Circuit Court is affirmed.

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<sup>4</sup> Kentucky Revised Statutes.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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