

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2005-CA-001637-MR

WILBUR TAYLOR

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE GARY D. PAYNE, JUDGE  
ACTION NO. 92-CR-00247

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: HENRY AND VANMETER, JUDGES; BUCKINGHAM,<sup>1</sup> SENIOR JUDGE.

BUCKINGHAM, SENIOR JUDGE: Wilbur Taylor appeals from an order of the Fayette Circuit Court denying his motion to vacate his conviction and sentence pursuant to CR<sup>2</sup> 60.02. We affirm.

In 1992, Taylor was tried in the Fayette Circuit Court for the offenses of murder, first-degree burglary, first-degree robbery, and second-degree persistent felony offender (PFO II). The jury found Taylor guilty of the offenses of first-degree

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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.

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

manslaughter, first-degree burglary, and theft by unlawful taking of property over \$100.

After those verdicts, Taylor waived jury sentencing and pled guilty to PFO II. The court sentenced Taylor to 20 years on the manslaughter charge, 20 years on the burglary charge, and 5 years on the theft charge. The court then enhanced the 20-year manslaughter sentence, under the PFO II count, to life in prison, and it directed the other sentences to run consecutively with each other but concurrently with the manslaughter sentence. Taylor's conviction and sentence was affirmed on direct appeal to the Kentucky Supreme Court.<sup>3</sup>

In November 1996, Taylor filed a motion to vacate his conviction under RCr<sup>4</sup> 11.42 and CR 60.02, claiming ineffective assistance of counsel and other trial errors. The trial court denied the motion, and this court affirmed the trial court's order.<sup>5</sup> The Kentucky Supreme Court denied discretionary review.<sup>6</sup>

On July 19, 2005, Taylor filed a motion to amend his sentence pursuant to CR 60.02 claiming that his guilty plea to PFO II was not knowingly, intelligently, and voluntarily

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<sup>3</sup> See 92-SC-693-MR.

<sup>4</sup> Kentucky Rules of Criminal Procedure.

<sup>5</sup> See 97-CA-1622-MR.

<sup>6</sup> See 98-SC-625-D.

entered. The trial court denied the motion, and this appeal by Taylor followed.

Taylor raises two arguments on appeal. First, he argues that he was entitled to CR 60.02 relief because his counsel and the trial court misled him into thinking he would be out of prison in 12 years if he accepted the plea offer on the murder charge of 20 years enhanced to life under PFO II. Second, he argues that he was ineligible for prosecution for PFO II because he had never been to prison prior to the sentence that he is now serving.

When Taylor filed his RCr 11.42 motion in 1996, one ground he alleged was that he had received the ineffective assistance of counsel because his trial counsel informed him that he would be eligible for parole in 8 years rather than 12 years. When the trial court denied Taylor relief on that ground, he appealed to this court. This court rejected Taylor's argument, determining that Taylor had knowingly and willingly entered his guilty plea to PFO II.

Taylor's CR 60.02 argument in this regard is a variation of the same argument he raised in his RCr 11.42 motion. Rather than alleging the ineffective assistance of counsel, Taylor now alleges that his guilty plea was not entered knowingly and willingly due to his being misled by his counsel and the court.

"CR 60.02 is not intended merely as an additional opportunity to raise Boykin defenses. It is for relief that is not available by direct appeal and not available under RCr 11.42." See Gross v. Commonwealth, 648 S.W.2d 853, 856 (Ky. 1983). An attack on the validity of a guilty plea on the basis that it was not knowingly and willingly entered is a ground that could have been raised by Taylor in an RCr 11.42 motion. Thus, Taylor could not seek relief on that ground under CR 60.02. The trial court properly denied relief on this ground.

Second, Taylor argues that he was ineligible for PFO II prosecution because he had never been to prison prior to his conviction for these offenses. Taylor relies on the Commentary to KRS<sup>7</sup> 532.080(2)(c) to support his argument. While the language in the Commentary supports Taylor's argument, the clear language of the statute does not. See KRS 532.080(2)(c).

The Commonwealth also argues that Taylor's motion should have been dismissed because it was not brought within a "reasonable time" as required by CR 60.02. The trial court made no determination in this regard. Therefore, as we have affirmed the trial court on other grounds, we decline to address this issue.

The order of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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<sup>7</sup> Kentucky Revised Statutes.

BRIEF FOR APPELLANT:

Wilbur Taylor, *Pro Se*  
Burgin, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo  
Attorney General of Kentucky

Samuel J. Floyd, Jr.  
Assistant Attorney General  
Frankfort, Kentucky