

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-001783-MR

WILLIAM WOOLUM

APPELLANT

APPEAL FROM LYON CIRCUIT COURT
v. HONORABLE C. RENE' WILLIAMS, SPECIAL JUDGE
ACTION NO. 81-CR-00067

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: GUIDUGLI AND SCHRODER, JUDGES; EMBERTON, SENIOR JUDGE.¹

SCHRODER, JUDGE: William Woolum appeals from an order of the
Lyon Circuit court denying his CR 60.02 motion. We affirm.

In 1981, a Lyon County grand jury returned an
indictment charging appellant with the offense of murder.
Relevant to this appeal, the indictment erroneously charged the
offense of murder as a "Class A Felony (non-capital)" offense
under "KRS 507.010". A jury found appellant guilty of murder,

¹ 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.

and, on August 6, 1982, he was sentenced to life imprisonment. Appellant's conviction was upheld by the Kentucky Supreme Court.

On September 9, 2002, appellant filed a petition for writ of habeas corpus in Lyon Circuit Court, in which he contended his indictment was defective. In an order entered April 16, 2003, the Lyon Circuit Court denied the petition, on grounds that the issue raised could and should have been raised on direct appeal. A panel of this court affirmed the circuit court. The Kentucky Supreme Court denied appellant's motion for an enlargement of time to file a motion for discretionary review.

On November 16, 2004, appellant filed a "Motion to Vacate Conviction and Sentence Pursuant to CR 60.02(e)(f)". Appellant contended therein that the indictment was defective because it charged murder as a Class A, non-capital offense under KRS 507.010, whereas murder was a capital offense, and KRS 507.010 is not the correct statute. Appellant contended that because the indictment was incorrect on its face and deficient, it is null and void.

In an order entered on August 5, 2005, the Lyon Circuit Court denied the CR 60.02 motion. The court found the errors did not affect appellant's substantial rights, as the indictment listed a punishment (Class A felony, which carried the penalty of twenty years to life) less than the actual

punishment appellant could have faced, as murder was at the time, and is, a capital offense. The court further found the indictment sufficient under RCr 6.10. The court additionally found that this issue could and should have been raised on direct appeal, and that the motion was not timely filed. Accordingly, the court denied the CR 60.02 motion. In the same order, the court denied appellant's motion for default judgment. This appeal followed.

Appellant alleges five errors in his appeal brief. The alleged errors and the discussion thereof are overlapping and somewhat hard to follow. However, we have deduced two specific alleged errors out of his narrative as to why the court erred in denying his CR 60.02 motion, these errors being that the indictment was defective and therefore, the judgment was void, and that the court erred in denying his motion for default judgment.

Appellant is correct that the indictment contained errors, in that it charged murder as a "Class A Felony (non-capital)" offense under KRS 507.010, whereas murder was at the time (and is) a capital offense, and incorrectly cited the murder statute as KRS 507.010 (which is a definitions statute) rather than KRS 507.020. CR 60.02 is for relief that is not available on direct appeal or in an RCr 11.42 motion. Gross v. Commonwealth, 648 S.W.2d 853, 856 (Ky. 1983). The errors in the

indictment raised by appellant in his CR 60.02 motion were known at the time of trial, and could and should have been raised on direct appeal. Id. Further, motions under CR 60.02(e) and (f) must be made within a reasonable time. Appellant's CR 60.02 motion, made 23 years after the indictment was issued, was not timely. Even were we to address the merits of appellant's argument, as did the trial court, it would fail on the merits as well. The errors in the indictment did not mislead appellant to his prejudice, nor prejudice his substantial rights on the merits. RCr 6.10(3); RCr 6.12; Godby v. Commonwealth, 491 S.W.2d 647, 650 (Ky. 1973). The indictment was sufficient per RCr 6.10 as it contained a plain, concise and definite statement of the essential facts constituting the specific offense with which appellant was charged.² The trial court did not abuse its discretion in denying the CR 60.02 motion.

Appellant additionally argues that the trial court abused its discretion in failing to grant default judgment against the Commonwealth, on grounds that the Commonwealth failed to timely respond to his CR 60.02 motion. Granting of a default judgment is generally within the discretion of the trial court. Harris v. Commonwealth, 688 S.W.2d 338 (Ky.App. 1984). CR 55.04 provides that "No judgment by default shall be entered

² The indictment charged, "On or about the 8 day of September, 1981, in Lyon County, Kentucky the above named defendant - did intentionally cause the death of Lester Rhoades."

against the Commonwealth . . . unless the claimant establishes his claim or right to relief by evidence satisfactory to the Court." No abuse of discretion occurred.

For the aforementioned reasons, the order of the Lyon Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

William Woolum, *pro se*
Eddyville, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General

Michael L. Harned
Assistant Attorney General
Frankfort, Kentucky