

RENDERED: APRIL 14, 2006; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2005-CA-001815-MR

TERRELL WOOSLEY

APPELLANT

v. APPEAL FROM HOPKINS CIRCUIT COURT  
HONORABLE CHARLES W. BOTELEER, JR., JUDGE  
ACTION NO. 77-CR-20338

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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

EMBERTON, SENIOR JUDGE: Terrell Woosley appeals from a denial of a motion to amend his final judgment and sentence pursuant to CR 60.02(f). Because his motion was not filed within a reasonable time, we affirm.

On November 7, 1978, Woosley pleaded guilty to first-degree robbery and was sentenced to ten years' imprisonment. On October 1, 1979, he filed a motion pursuant to "RCr 13.04 and CR 60.02" requesting that his Hopkins County sentence be served concurrently with a sentence received in Henderson County. The

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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.

court denied the motion noting that since the Henderson County offense was committed while Woosley was awaiting trial on the Hopkins County offense, the two sentences could not be served concurrently.<sup>2</sup> Woosley did not appeal the denial of the motion.

He filed the present motion on June 2, 2005, and argues that the Hopkins County sentence should be amended to run concurrent with his Henderson County sentence since no pre-sentence investigation or report was provided or considered by the Court before imposing sentence. He also contends that the court erroneously refused to accept the recommendation of the Commonwealth that the sentences be run concurrently.

CR 60.02 is not an additional opportunity for the movant to relitigate issues that could have been reasonably presented by direct appeal or in an RCr 11.42 proceeding.<sup>3</sup> The rule permits relief only in extraordinary circumstances and is not available if the movant knew or should have known through the exercise of reasonable diligence of the alleged error and in time to have otherwise presented the issue to the court.<sup>4</sup> CR 60.02 requires that the any motion brought under the rule be pursued within a reasonable time.<sup>5</sup>

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<sup>2</sup> KRS 533.060(3).

<sup>3</sup> McQueen v. Commonwealth, 948 S.W.2d 415, 416 (Ky. 1997).

<sup>4</sup> Barnett v. Commonwealth, 979 S.W.2d 98, 101 (Ky. 1998).

<sup>5</sup> Gross v. Commonwealth, 648 S.W.2d 853 (Ky. 1983).

The alleged errors either were or could have been known to Woosley at the time the judgment was entered. Clearly waiting twenty-seven years to raise the validity of his sentencing is not "reasonable" as required by CR 60.02.

The order is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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