

RENDERED: DECEMBER 22, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-002019-MR

GARY NAIR

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE GEOFFREY P. MORRIS, JUDGE
ACTION NO. 85-CR-000169

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; ACREE, JUDGE; KNOPF,¹ SENIOR JUDGE.
KNOPF, SENIOR JUDGE: Gary Nair was convicted of wanton murder
in Jefferson Circuit Court. He received a sentence of life
imprisonment. The Supreme Court of Kentucky affirmed his
conviction on direct appeal on May 22, 1986. No. 85-SC-978-MR.
On August 9, 1991, this Court rendered an opinion affirming the
denial of relief pursuant to RCr 11.42. No. 90-CA-1115-MR.
Nair next filed a motion pursuant to CR 60.02(f) in Jefferson

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of
the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution
and KRS 21.580.

Circuit Court alleging defective jury instructions. That motion was denied and this appeal follows.

Nair, pro se, argues that he is entitled to relief because the trial court improperly instructed the jury on the range of penalties for the offense of wanton murder. However, motions pursuant to CR 60.02 must be made within a reasonable time. Gross v. Commonwealth, 648 S.W.2d 853, 857 (Ky. 1983). The determination of what constitutes a reasonable time is within the discretion of the trial court. Id. at 858. Here, the motion pursuant to CR 60.02 was not made until twenty years after his conviction was affirmed on direct appeal. Further, the alleged defect in the jury instructions could have reasonably been presented on direct appeal or on his motion pursuant to RCr 11.42. There was no error.

Accordingly, the order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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