

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-002243-MR

RANDALL OSBORNE

APPELLANT

APPEAL FROM CLARK CIRCUIT COURT
v. HONORABLE JULIA HYLTON ADAMS, CIRCUIT JUDGE
INDICTMENT NOS. 90-CR-00001 & 90-CR-00023

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: DIXON AND TAYLOR, JUDGES; KNOPF,¹ SENIOR JUDGE.

DIXON, JUDGE: Randall Osborne appeals *pro se* to this Court from the Clark Circuit Court's denial of his CR² 60.02 motion for post-conviction relief. In this appeal, Osborne asserts that his sentence should be vacated due to ten errors committed by the trial court.

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.

² Kentucky Rules of Civil Procedure.

On January 11, 1990, Osborne was indicted on charges of murder and first-degree robbery. He was separately indicted for possession of cocaine. In April 1990, Osborne pleaded guilty to the charges, and the court sentenced him to life imprisonment for murder and twenty-one years for robbery and cocaine possession. In September 1997, Osborne moved to have his sentences vacated pursuant to RCr³ 11.42. The trial court denied Osborne's motion, and this Court affirmed.⁴

In the case at bar, the trial court denied Osborne's CR 60.02 motion because it was untimely and improper. The majority of Osborne's claims relate to the validity of his guilty plea. He also contends the court erred by denying his CR 60.02 motion without an evidentiary hearing and by denying Osborne's request for counsel on his CR 60.02 motion.

After review of the record, we agree with the trial court that Osborne's claims should have been raised on direct appeal or via his RCr 11.42 motion. The case law in this Commonwealth is clear as to the appropriate method for a defendant to seek redress:

We hold that the proper procedure for a defendant aggrieved by a judgment in a criminal case is to directly appeal that judgment, stating every ground of error which it is reasonable to expect that he or

³ Kentucky Rules of Criminal Procedure.

⁴ *Osborne v. Commonwealth*, 2003-CA-000687-MR (Ky. App. 2004).

his counsel is aware of when the appeal is taken.

Next, we hold that a defendant is required to avail himself of RCr 11.42 while in custody under sentence or on probation, parole or conditional discharge, as to any ground of which he is aware, or should be aware, during the period when this remedy is available to him. Final disposition of that motion, or waiver of the opportunity to make it, shall conclude all issues that reasonably could have been presented in that proceeding. The language of RCr 11.42 forecloses the defendant from raising any questions under CR 60.02 which are "issues that could reasonably have been presented" by RCr 11.42 proceedings.⁵

Consequently, Osborne's claims are inappropriate for CR 60.02 review, and we decline to address his arguments.

For the foregoing reasons the order of Clark Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE

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⁵ *Gross v. Commonwealth*, 648 S.W.2d 853, 857 (Ky. 1983).