

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-000253-MR

STEELY THACKER

APPELLANT

v. APPEAL FROM BELL CIRCUIT COURT  
HONORABLE JAMES L. BOWLING, JR., JUDGE  
ACTION NO. 80-CR-00052

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, CHIEF JUDGE; KELLER, JUDGE; BUCKINGHAM,<sup>1</sup> SENIOR JUDGE.

COMBS, CHIEF JUDGE: Steely Thacker appeals from the denial of his motion for relief filed pursuant to the provisions of Kentucky Rules of Civil Procedure (CR) 60.02.

We affirm.

In 1980, Thacker was indicted for three counts of murder, one count of first-degree assault, and one count of attempted murder. The indictment followed a grisly

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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.

and brutal attack perpetrated upon four acquaintances: Andrew Maiden, twenty-five years of age; Johnny Ray Mozingo, twenty-four; Vonna Baird, aged twenty-four; and Baird's young sister, Connie Bolton, sixteen. Bolton was killed by a close-range gunshot to the back of her head; Maiden and Baird were killed by the same weapon, their bodies riddled with bullets. Mozingo was also shot multiple times and was left for dead. The bodies were recovered from an abandoned strip mine four miles from Thacker's mobile home. From his hospital bed, Mozingo named Thacker and his brother as the perpetrators. On March 3, 1980, Thacker surrendered to police. He was tried by a jury and was convicted. The final judgment sentencing him to life imprisonment was entered on March 2, 1981.

Following his conviction, Thacker appealed as a matter of right to the Kentucky Supreme Court. On October 13, 1981, the Court rendered a unanimous opinion affirming the judgment and sentence.

Subsequently, Thacker began to pursue a series of collateral attacks upon his conviction. On October 29, 1984, he filed a motion to vacate the judgment pursuant to the provisions of Kentucky Rules of Criminal Procedure (RCr) 11.42. He alleged that he had been deprived of a fair trial since his counsel had been ineffective. On March 27, 1985, the motion was denied by the trial court. On appeal, this court affirmed. After closely examining the record, we concluded that Thacker had received more than adequate representation from retained trial counsel.

On December 2, 2005, Thacker filed a motion pursuant to the provisions of Kentucky Rules of Civil Procedure (CR) 60.02. Raising several issues, Thacker argued again in the motion that he had been wrongfully convicted because his counsel had provided inadequate representation. On December 28, 2005, the Bell Circuit Court rendered its order denying the motion for relief, concluding as follows:

The [motion] raises issues identical to those previously determined by the Kentucky Supreme Court in the appeal of [Thacker's] conviction. Additionally, the motion alleges ineffective assistance of counsel. Rule 60.02 cannot be used as a back door to sneak an 11.42 motion into the record. The time limit has long expired for an 11.42 motion. The facts alleged in the motion were all known at the time of trial and no fundamental constitutional right has been recognized or asserted since [Thacker's] conviction that would permit him to proceed under RCr 11.42

This appeal followed.<sup>2</sup>

Thacker alleged several constitutional violations in his motion for relief. However, the provisions of CR 60.02 require at the threshold an assertion and demonstration that reasons of an “extraordinary nature” exist to justify the extreme relief available under this rule. Moreover, a CR 06.02 motion is not a substitute for appeal; an alleged error that could reasonably have been presented on direct appeal **cannot be raised** by a motion filed pursuant to CR 60.02. *See Cinnamon v. Commonwealth*, 455 S.W.2d 583 (Ky. 1970); *McQueen v. Commonwealth*, 948 S.W.2d 415 (Ky. 1997).

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<sup>2</sup> After reviewing the record, the Department of Public Advocacy filed a statement with this court indicating that the appeal does not merit the appointment of appellate counsel under the guidelines of Kentucky Revised Statutes Chapter 31.110 and that it does not appear to be a proceeding that a reasonable person with adequate means would be willing to bring at his own expense.

Finally, CR 60.02 is not intended as an additional opportunity to re-litigate the same issues which were considered in an RCr 11.42 proceeding.

Thacker has failed to demonstrate that any of his arguments could not have been raised on direct appeal. Indeed, our review of the record indicates that several of his arguments were specifically considered and rejected by the Supreme Court of Kentucky more than twenty-five years ago. Nor can he show that any of the claims now asserted could not have been raised by way of a motion filed pursuant to the provisions of RCr 11.42. This court undertook a careful review of the record in 1986 and concluded that Thacker had received more than adequate representation from trial counsel. Thacker does not allege any specific basis for relief under CR 60.02 or any extraordinary circumstances that would justify the relief he seeks.

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

ALL CONCUR.

BRIEF FOR APPELLANT *PRO SE*:

Steely Thacker  
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BRIEF FOR APPELLEE:

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