

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-000517-MR

LARRY LOPIANO

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE GEOFFREY P. MORRIS, JUDGE  
INDICTMENT NO. 02-CR-001205

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE, KELLER, AND LAMBERT, JUDGES.

LAMBERT, JUDGE: Larry Lopiano appeals from a denial of a motion for relief pursuant to CR 60.02. For the reasons set forth herein, we affirm.

Lopiano was indicted for second degree forgery, criminal possession of a forged instrument, receipt of stolen property over three hundred dollars, and being a persistent felony offender. He failed to appear in court on May 28, 2002 and a bench warrant was issued. He was arrested July 14, 2003. Counsel was subsequently appointed, and trial set for December 3, 2003.

Lopiano entered a guilty plea but then failed to appear for sentencing January 29, 2003. A bench warrant was issued for his arrest. He next appeared before the court May 20, 2004, and final sentencing was set for June 1, 2004. Judgment was entered convicting Lopiano and sentencing him to seven years' imprisonment, but the court withheld the sentence and placed him on five years probation. Lopiano's probation was subsequently revoked, and he was sentenced to seven years' imprisonment.

Lopiano filed a motion for relief pursuant to CR 60.02, and the trial court denied the motion by order. He hereby appeals.

Lopiano alleges a series of constitutional violations in his motion for relief. CR 60.02 does not provide grounds, however, for claims alleging convictions obtained in violation of constitutionally protected rights except under the "other reasons of an 'extraordinary nature' justifying relief." Moreover, it has long been held in Kentucky that an alleged error which could have been corrected on an appeal cannot be raised by a motion under CR 60.02. *See Wimsatt v. Haydon Oil Co.*, 414 S.W.2d 908 (Ky. 1967). The proper method of appeal is RCr 11.42, which forecloses Lopiano from raising any questions under CR 60.02 which are issues that could reasonably have been presented in RCr 11.42 proceedings. *See Gross v. Commonwealth*, 648 S.W.2d 853, 857 (Ky. 1983).

CR 60.02 was enacted as a substitute for the common law writ of *coram nobis*. The purpose of such a writ was to bring before the court errors that (1) had not been put into issue or passed on, (2) were unknown and could not have been known to the party by the exercise of reasonable diligence and in time to have been otherwise

presented to the court, or (3) which the party was prevented from so presenting by duress, fear, or other sufficient cause. *See Black's Law Dictionary, Fifth Edition*, 487, 1444. In *Harris v. Commonwealth*, 296 S.W.2d 700 (Ky. 1956), the Kentucky Supreme Court held that CR 60.02 does not extend the scope of the remedy of *coram nobis* nor add additional grounds of relief. It held that *coram nobis* “is an extraordinary and residual remedy to correct or vacate a judgment upon facts or grounds, not appearing on the face of the record and not available by appeal or otherwise, which were not discovered until after rendition of judgment without fault of the party seeking relief.”

Lopiano fails to demonstrate that any of his arguments could not have been raised on direct appeal or by way of a motion pursuant to RCr 11.42. He also neglects to allege any specific basis for relief under CR 60.02 or special circumstances that would justify relief thereunder. Accordingly, the judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Larry Lopiano #174140, *Pro se*  
Lexington, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo  
Attorney General of Kentucky

Michael A. Nickles  
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