

Commonwealth Of Kentucky

Court of Appeals

NO. 2006-CA-000607-MR

DANNY CHAMBERS

APPELLANT

v. APPEAL FROM LEE CIRCUIT COURT
HONORABLE WILLIAM W. TRUDE, JR., JUDGE
ACTION NO. 92-CR-00040

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: ABRAMSON, GUIDUGLI, AND VANMETER, JUDGES.

GUIDUGLI, JUDGE: Danny Chambers appeals from an order of the Lee Circuit Court denying his motion to correct, vacate or set aside judgment pursuant to CR 60.02. Chambers argues that he was denied due process and equal protection when the trial court imposed the maximum sentence even though the jury was unable to agree on the recommended sentence. For the reasons stated below, we affirm the order on appeal.

The facts are not in dispute. On November 23, 1992, Chambers was indicted by the Lee County grand jury on one count

of murder. After the jury returned a guilty verdict, it was unable to agree on a recommended term of imprisonment. A final judgment was entered on July 13, 1994, whereupon Chambers was sentenced to a term of life in prison.

Chambers prosecuted a direct appeal to the Kentucky Supreme Court, which was affirmed. *Chambers v. Commonwealth*, No. 94-SC-576. Thereafter, he filed a motion to vacate the judgment pursuant to RCr 11.42. That motion was denied, and a panel of this Court later affirmed the denial. *Chambers v. Commonwealth*, No. 96-CA-1164.

On November 5, 2005, Chambers filed a motion to correct, vacate or set aside the judgment pursuant to CR 60.02. As a basis for the motion, he argued that the trial court erred in fixing the sentence at life imprisonment after the jury was unable to agree upon a recommended sentence. The circuit court denied the motion by order entered on February 21, 2006, and this *pro se* appeal followed.

Chambers' sole argument on appeal is that the trial court erred in denying his motion for CR 60.02 relief. He maintains that he was denied due process and equal protection when the trial court imposed the maximum sentence of life imprisonment even though the jury had been unable to agree upon a recommended sentence. Chambers contends that the imposition of the maximum sentence under these circumstances constitutes a

deprivation of certain constitutional rights and that the circuit court erred in failing to so rule. He seeks an order reversing the circuit court and remanding the matter for a jury-recommended sentence.

We have closely examined Chambers' argument and find no basis for reversing the order on appeal. CR 60.02 states,

On motion a court may, upon such terms as are just, relieve a party or his legal representative from its final judgment, order, or proceeding upon the following grounds: (a) mistake, inadvertence, surprise or excusable neglect; (b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59.02; (c) perjury or falsified evidence; (d) fraud affecting the proceedings, other than perjury or falsified evidence; (e) the judgment is void, or has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (f) any other reason of an extraordinary nature justifying relief. The motion shall be made within a reasonable time, and on grounds (a), (b), and (c) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this rule does not affect the finality of a judgment or suspend its operation.

CR 60.02 is not a mechanism for prosecuting an additional appeal. *Gross v. Commonwealth*, 648 S.W.2d 853 (Ky. 1983). Rather, it is an extraordinary means of addressing claims that could not have been presented on direct appeal or via RCr 11.42. *Id.* Chambers appealed his conviction to the

Kentucky Supreme Court and should have raised the instant claim of error, if at all, in that appeal. This fact, taken alone, forms a sufficient basis for affirming the order on appeal.

Arguendo, even if Chambers' claim were properly brought via CR 60.02, it would nevertheless fail. Chambers has offered no statutory law or case law supportive of his claim that a trial court may not impose the maximum available sentence unless the jury has first recommended that sentence.

Furthermore, and as the Commonwealth properly notes, claims under CR 60.02 must be raised within one year under CR 60.02 (a), (b) and (c), and for all other grounds within "a reasonable time." Chambers' conviction occurred on July 13, 1994, and the motion that forms the basis of the instant appeal was filed some 11 years later on November 7, 2005.¹ This lapse runs afoul of the "reasonable time" requirement of CR 60.02. Again, however, this point is moot given that the issue Chambers raises should have been presented, if at all, as part of his direct appeal to the Kentucky Supreme Court, or thereafter as part of his RCr 11.42 motion. Accordingly, we find no error.

For the foregoing reasons, we affirm the order of the Lee Circuit Court.

ALL CONCUR.

¹ The Commonwealth incorrectly claims that the conviction occurred in 1984.

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