

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001194-MR

JACK HAYS

APPELLANT

v. APPEAL FROM CALDWELL CIRCUIT COURT
HONORABLE TIMOTHY C. STARK, JUDGE
ACTION NOS. 82-CR-00026 AND 82-CR-00046

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: THOMPSON AND VANMETER, JUDGES; PAISLEY,¹ SENIOR JUDGE.

THOMPSON, JUDGE: Jack Hays appeals from an order of the Caldwell Circuit Court denying his motion for post-conviction relief pursuant to Kentucky Rules of Civil Procedure (CR) 60.02(e). For the reasons stated below, we affirm.

In July 1982, Hays was being transported from an Indiana prison to Livingston County, Kentucky, to be tried on felony criminal charges. Hays, who was

¹ Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

handcuffed and shackled in the backseat, was transported back to Kentucky by two law enforcement officers, who were in the front seat of the car.

Shortly after entering Livingston County, Hays, who had freed himself from the handcuff and shackles, attacked the two officers. Using a previously concealed knife, Hays cut the throat of one of the officers and repeatedly stabbed the other. Hays then escaped into a nearby wooded area. Approximately a week later, Hays was captured near Memphis, Tennessee.

After he was returned to Kentucky, a Livingston County grand jury indicted Hays on two counts of assault in the first degree, escape in the first degree, and persistent felony offender in the first degree. He then moved for a change of venue, and his case was transferred to Caldwell County. In December 1982, a jury found Hays guilty on all counts, and he was sentenced to life imprisonment pursuant to the persistent felony offender statute.

In an unpublished opinion, 83-SC-272-MR, the Kentucky Supreme Court affirmed his conviction on direct appeal. However, prior to the issuance of that opinion, Hays was transferred back to Indiana to recommence service of the sentence he had been serving when he was originally brought to Kentucky. Upon release by Indiana prison authorities, Hays was transferred into the custody of the Kentucky Department of Corrections to recommence service of his life sentence which he received as a result of his conviction in 1982.

On October 15, 1999, Hays filed a motion for post-conviction relief pursuant to CR 60.02(f). The trial court denied this motion in December 1999. On April 12, 2006, Hays filed a motion for post-conviction relief pursuant to CR 60(e). Hays alleged that his 1982 judgment of conviction was void; thus, his release from prison was mandated by constitutional guarantees. Ruling that his judgment of conviction was valid, the trial court denied his motion. This appeal followed.

Hays' sole allegation on appeal is that the trial court erred by failing to conclude that his judgment of conviction was void. Specifically, Hays alleges that Kentucky lost jurisdiction of his case when it transferred him to Indiana without statutory authorization, thus, rendering his judgment of conviction void and barring its prospective enforcement. Invoking the forfeiture rule, Hays cites *Jones v. Rayborn*, 346 S.W.2d 743 (Ky. 1961), *Yost v. Smith*, 862 S.W.2d 852 (Ky. 1993), and *Balsley v. Commonwealth*, 428 S.W.2d 614 (Ky. 1967), for the proposition that his unauthorized transfer to Indiana precluded Kentucky from subjecting “him to further punishment.” Accordingly, Hays contends that his CR 60.02(e) motion was incorrectly denied.

Since this appeal challenges a trial court’s denial of a CR 60.02 motion, we review the court’s ruling under an abuse of discretion standard because CR 60.02 actions are committed to the sound discretion of the trial court. *Richardson v. Brunner*, 327 S.W.2d 572, 574 (Ky. 1959). “The test for abuse of discretion is whether the trial judge’s decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

CR 60.02(e) states that a party may be granted relief from a final judgment, order, or proceeding upon showing that “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.”

However, in order to be granted a motion under CR 60.02, a defendant must demonstrate why he is entitled to this extraordinary relief and must affirmatively allege facts which, if true, justify vacating the judgment. *Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983); *Ringo v. Commonwealth*, 455 S.W.2d 49, 50 (Ky.1970) (CR 60.02 requires a very substantial showing to merit relief under its provisions).

From a review of the record, we conclude that the trial court did not err in denying Hays' motion for post-conviction relief. Although Hays made numerous factual and legal statements in his brief, we conclude that these statements are in conflict with our precedents and the record on appeal. Most notably, Hays' critical reliance on the forfeiture rule, which specified that Kentucky's unauthorized transfer of inmates to sister jurisdictions terminated its authority to reacquire custody of such inmates, is no longer a correct statement of the law. In *Commonwealth v. Hale*, 96 S.W.3d 24 (Ky. 2003), the court abandoned the forfeiture rule and held that Kentucky does not lose its authority to require an inmate to serve his sentence “any time its officials, acting without statutory authorization, transfer custody of an inmate serving a Kentucky sentence to another sovereign.” *Id.* 37-38.

Since Hays' allegation that Kentucky's unauthorized transfer of him to Indiana deprived Kentucky of the authority to require him to recommence service of his sentence is contrary to the present state of the law, Hays' central argument for invalidating his judgment of conviction is without merit. Furthermore, as to the evidentiary requirement of CR 60.02(e), Hays has not asserted any allegation which, if true, would justify vacating his judgment of conviction.

A judgment of conviction is entitled to the presumption of validity until there is some evidence to prove otherwise. *Conklin v. Commonwealth*, 799 S.W.2d 582, 584 (Ky. 1990). Hays' failure to assert any legitimate ground for the invalidation of his judgment of conviction is fatal to his claim for post-conviction relief under CR 60.02(e). Without evidence to the contrary, we must agree with the trial court that Hays' judgment of conviction is valid and that Kentucky may impose the sentence under the conviction against him.

For the foregoing reasons, the order of the Caldwell Circuit Court denying Hays' motion for post-conviction relief pursuant to CR 60.02(e) is affirmed.

ALL CONCUR.

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