

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001385-MR

ROBERT D. MCCRAVY

APPELLANT

v. APPEAL FROM OHIO CIRCUIT COURT
HONORABLE RONNIE C. DORTCH, JUDGE
ACTION NO. 94-CR-00001

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: DIXON AND VANMETER, JUDGES; GRAVES,¹ SENIOR JUDGE.

VANMETER, JUDGE: Robert McCravy appeals *pro se* from the Ohio Circuit Court's order denying his motion seeking CR² 60.02(f) and RCr³ 10.26 relief. For the reasons stated, we affirm.

¹ Senior Judge John William Graves, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

² Kentucky Rules of Civil Procedure.

³ Kentucky Rules of Criminal Procedure.

In January 1995, McCravy was convicted of three counts of wanton murder and two counts of wanton endangerment stemming from a January 1994 automobile collision. He was sentenced to a total of seventy years' imprisonment. The Kentucky Supreme Court affirmed the trial court's judgment in June 1997.⁴ Next, the trial court's denial of McCravy's motion seeking RCr 11.42 relief was affirmed by this court in March 2002.⁵ Finally, in March 2006 McCravy filed a motion seeking CR 60.02(f) and RCr 10.26 relief. The motion was denied, and this appeal followed.

CR 60.02(f) permits a court to provide relief “from its final judgment, order, or proceeding” based on a “reason of an extraordinary nature justifying relief.”

However, as stated in *Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983),

a defendant is required to avail himself of RCr 11.42 while in custody . . . 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.

See also McQueen v. Commonwealth, 948 S.W.2d 415 (Ky. 1997).

On appeal, McCravy contends that he was afforded ineffective assistance when his trial counsel failed to argue “that the elements of the incident(s) are Manslaughter in the Second Degree under KRS 507.040[,]” and failed to investigate

⁴ *McCravy v. Commonwealth*, 95-SC-575-MR (Ky., June 19, 1997).

⁵ *McCravy v. Commonwealth*, 2000-CA-002301-MR (Ky.App., March 8, 2002).

McCrary's "medical conditions/effects of his prescribed medications." However, as both issues clearly are ones which reasonably could have been presented in McCrary's prior RCr 11.42 proceeding, they were not properly before the trial court pursuant to CR 60.02(f). *See Gross*, 648 S.W.2d at 856.

Given these conclusions, it also follows that there is no merit to McCrary's claim that counsel's alleged cumulative errors entitled him to relief below.

The court's order is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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