

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2006-CA-001571-MR

CHARLES W. TYLER

APPELLANT

v. APPEAL FROM MARION CIRCUIT COURT  
HONORABLE DOUGHLAS M. GEORGE, JUDGE  
ACTION NO. 93-CR-00082

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: THOMPSON AND WINE, JUDGES; KNOPF,<sup>1</sup> SENIOR JUDGE.

KNOPF, SENIOR JUDGE: Charles W. Tyler, *pro se*, appeals the denial of his motion for an independent action pursuant to CR 60.03. We affirm.

In 1993, Tyler, a co-defendant Michael Strickler, and a third individual walked to the residence of Gary Mattingly. When Mattingly answered the door, the men pointed a gun at him and identified themselves as police. Once inside the residence, the men tied up Mattingly, his wife, and their two children at gunpoint. They removed

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<sup>1</sup> Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Mattingly's wallet from his pants pocket, which contained approximately \$700.00 in cash. The men also stole jewelry, a watch, and a gun. Tyler was convicted of first-degree robbery, first-degree burglary, theft by unlawful taking over \$300.00, and for being a first-degree persistent felony offender (PFO). Tyler received a sentence of life imprisonment for robbery, life imprisonment for burglary, and twenty years for theft. On direct appeal, the Supreme Court of Kentucky reversed the conviction for unlawful taking on double jeopardy grounds and ordered the dismissal of that count from the indictment. Case No. 95-SC-627-MR. The Court affirmed the judgment in all other respects. *Id.*

On October 22, 1997, Tyler filed a motion pursuant RCr 11.42 alleging ineffective assistance of counsel because trial counsel failed to object to the admissibility of a prior judgment used to secure the PFO conviction. The trial court denied the motion. In Case No. 1998-CA-001462-MR, this Court vacated and remanded, holding that the judgment used to demonstrate his status as a PFO offender did not meet the authentication requirements of KRS 422.040 and that counsel was ineffective for failing to object to its admission. On remand, the trial court denied Tyler's motion in limine to exclude evidence of the judgment for PFO purposes. On July 16, 2001, Tyler pled guilty to first-degree PFO and received a reduced sentence of twenty-five years rather than life imprisonment.

On November 15, 2001, Tyler filed a motion seeking credit for time served on a federal conviction. The motion was denied and no appeal was taken. On September 11, 2003, Tyler filed a motion pursuant to RCr 11.42 again raising the issue of credit for time served on federal charges. The motion was again denied. This Court affirmed the

denial of the motion in Case No. 2003-CA-002623-MR. On July 5, 2006, Tyler filed a motion for an independent action pursuant to CR 60.03 requesting that the trial judge recuse himself and to set aside his sentence on the basis that counsel was ineffective. The motion was denied and this appeal follows.

CR 60.03 provides:

Rule 60.02 shall not limit the power of any court to entertain an independent action to relieve a person from a judgment, order or proceeding on appropriate equitable grounds. Relief shall not be granted in an independent action if the ground of relief sought has been denied in a proceeding by motion under Rule 60.02, or would be barred because not brought in time under the provisions of that rule.

Claimants seeking relief pursuant to CR 60.03 must meet three requirements. *Bowling v. Commonwealth*, 163 S.W.3d 361, 365 (Ky. 2005). Claimants must demonstrate: (1) there is no other available or adequate remedy; (2) that claimant's own fault, neglect, or carelessness did not create the situation for which they are now seeking relief; and (3) a recognized ground for relief such as fraud, accident, or mistake. *Id.* (quoting *Campaniello Imports, Ltd. v. Saporiti Italia S.p.A.*, 117 F.3d 665, 662 (2nd Cir.1997)).

Tyler is not entitled to relief under CR 60.03 because he has not alleged errors that were unknown and could not have been discovered by the exercise of reasonable diligence at the time of his trial and RCr 11.42 motions. *Bowling*, 163 S.W.3d at 366; *Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983).

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

ALL CONCUR.

BRIEFS FOR APPELLANT:

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