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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001586-MR

STEVEN TAYLOR — APPELLANT

v.

APPEAL FROM KENTON CIRCUIT COURT
HONORABLE PATRICIA M. SUMME, JUDGE
ACTION NO. 82-CR-00266

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: DIXON AND LAMBERT, JUDGES; ROSENBLUM,[1] SENIOR JUDGE.

DIXON, JUDGE: Appellant, Steven Taylor, *pro se*, appeals from the Kenton Circuit Court's denial of his petition for a writ of venire facias de novo. Finding no error, we affirm.

In a previous opinion, this Court set forth much of the procedural history of this case:

[1] Senior Judge Paul Rosenblum 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.

> In 1983, Taylor pled guilty to charges of robbery and murder and he was sentenced to consecutive terms of ten years and life imprisonment. Five years later, Taylor filed a Kentucky Rule of Criminal Procedure (RCr) 11.42 motion alleging ineffective assistance of counsel. Kenton Circuit Court denied the RCr 11.42 motion, but this Court reversed and remanded with directions to hold an evidentiary hearing. Following an evidentiary hearing and the denial of the motion by the circuit court, this Court affirmed the circuit court's order. The Supreme Court denied discretionary review. Taylor then filed a petition for writ of habeas corpus in the United States District Court for the Eastern District of Kentucky, where he raised the constitutionality of the issues that were the basis of his RCr 11.42 motion. The district court dismissed his claim with prejudice, and the United States Court of Appeals for the Sixth Circuit denied Taylor's application for a certificate of probable cause. In 1993, Taylor filed a CR 60.02 motion claiming that he was entitled to relief because his trial counsel was not licensed to practice law in Kentucky when Taylor entered his guilty pleas. Kenton Circuit Court denied the motion and Taylor's subsequent motion for reconsideration. This Court affirmed, and the Supreme Court again declined to grant discretionary review. Taylor then filed a second CR 60.02 motion raising several new issues. Kenton Circuit Court declined to hold an evidentiary hearing and denied his motion.

Taylor v. Commonwealth, 1998-CA-002855-MR, slip op. at 1-2. This Court again affirmed the trial court's denial of CR 60.02 relief. *Id.*

On September 24, 2004, Appellant filed a petition for writ of venire facias de novo in the trial court asserting errors in the original proceedings. Specifically, Appellant claimed that (1) the Commonwealth's Notice of Intent to Seek the Death Penalty referred to a charge for which he was not indicted; (2) he was denied a sentencing hearing as provided in KRS 532.025(1); and (3) he did not waive his right to present

mitigating evidence to a jury. The trial court denied Appellant's motion, as well as a subsequent CR 59.05 motion to vacate it decision. This appeal ensued.

A petition for a venire facias de novo is defined in *Black's Law Dictionary* 1553 (7th ed. 1999) as:

> [a] writ for summoning a jury panel anew because of some impropriety or irregularity in the original jury's return or verdict so that no judgment can be given on it. The result of a new venire is a new trial, but when the party objects to the verdict because of an error in the course of the proceeding (and not on the merits), the form of motion was traditionally for a venire facias de novo.

As recently noted by this Court in *Martin v. Commonwealth*, 203 S.W.3d 173 (Ky.App. 2006), a petition for a venire facias de novo is essentially a motion for new trial, which pursuant to RCr 10.06(1) shall be served not later than five days after the return of the verdict, or, in the case of newly discovered evidence, not later than one year after the entry of the judgment. *Id.* As Appellant entered a valid guilty plea and was sentenced to life imprisonment in 1983, his 2004 motion is clearly untimely.

As the Commonwealth points out, Appellant has sought and been denied post-conviction relief under both RCr 11.42 and CR 60.02. He has had ample opportunity to raise the arguments he asserts herein and, in fact, was required to advance those arguments in his original motions. *Gross v. Commonwealth*, 648 S.W.2d 853 (Ky. 1983); *see also Hampton v. Commonwealth*, 454 S.W.2d 672 (Ky. 1970.) Furthermore, we agree with the trial court's conclusion that Appellant's arguments are wholly without merit.

The order of the Kenton Circuit Court is affirmed.

ALL CONCUR.

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