

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001632-MR

BOBBY EASTERLING

APPELLANT

v. APPEAL FROM ELLIOTT CIRCUIT COURT
HONORABLE JOHN DAVID CAUDILL, JUDGE
ACTION NO. 02-CR-00027

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE AND LAMBERT, JUDGES; ROSENBLUM,¹ SENIOR JUDGE.

ACREE, JUDGE: Bobby Easterling appeals from an order of the Elliot Circuit Court denying his request to vacate his conviction for flagrant nonsupport, pursuant to Kentucky Civil Rule (CR) 60.02. Easterling was charged with flagrant nonsupport in both Elliot and Morgan counties due to his arrearages with regard to two separate child support orders. He argues conviction of two counts of flagrant nonsupport constitutes double jeopardy. We disagree and affirm the trial court.

¹ Senior Judge Paul W. Rosenblum sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Easterling was ordered to pay child support by the Elliot Circuit Court for three children, ages five months to five and one-half years old. In addition, he was ordered to pay child support to a single child in Morgan County. After he fell behind on both obligations, Easterling was indicted for flagrant nonsupport in both counties. He entered a guilty plea to both indictments and received a total sentence of five years' imprisonment. Some time later, he filed a CR 60.02 motion to vacate the judgment from the Elliot Circuit Court for which he had received a three-year sentence. The motion was overruled, and this appeal followed.

On appeal, Easterling argues that being convicted of flagrant nonsupport twice violated his right to be free from double jeopardy because both convictions arose out of the same course of events. Kentucky Revised Statute (KRS) 530.050 provides in relevant part

- (2) A person is guilty of flagrant nonsupport when he persistently fails to provide support which he can reasonably provide and which he knows he has a duty to provide by virtue of a court or administrative order to a minor. . . .
- (3) A person has a duty to provide support for an indigent spouse, a minor **child or children**, or a child or children adjudged mentally disabled and, for purposes of this section, is presumed to know of that duty.

KRS 530.050(2)-(3)(emphasis supplied). Easterling argues the legislature's use of the phrase "child or children" should be interpreted to bar separate prosecutions for child support owed on behalf of more than one child even where, as here, the orders proceed

from two different courts, relate to different children, and involve two different payees. He has furnished us with no supporting authority for this contention. Further, we state categorically that his interpretation of the statute is without merit. In addition, it is well-settled law in this Commonwealth that a voluntary guilty plea “waive[s] all defenses other than that the indictment charges no offense.” *Centers v. Commonwealth*, 799 S.W.2d 51, 55 (Ky.App. 1990). Finally, “Civil Rule 60.02 is not intended merely as an additional opportunity to relitigate the same issues which could 'reasonably have been presented' by direct appeal or [Kentucky Rule of Criminal Procedure] RCr 11.42 proceedings.” *McQueen v. Commonwealth*, 948 S.W.2d 415, 416 (Ky. 1997)(citations omitted).

Easterling fails to establish that the two convictions amounted to double jeopardy. For these reasons, and since CR 60.02 relief was not an appropriate remedy to address an issue which could have been raised on direct appeal or in an RCr 11.42 proceeding, the trial court correctly denied his motion.

ALL CONCUR.

BRIEF FOR APPELLANT:

Bobby Easterling, *pro se*
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BRIEF FOR APPELLEE:

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