

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001815-MR

JAMES EDWARD HINES

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT
HONORABLE JOHN R. GRISE, JUDGE
ACTION NO. 82-CR-00515

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: KELLER AND TAYLOR, JUDGES; HENRY,¹ SENIOR JUDGE.

TAYLOR, JUDGE: James Edward Hines brings this *pro se* appeal from an August 11, 2006, order of the Warren Circuit Court denying his Ky. R. Civ. P. (CR) 60.02 motion to vacate judgment. We affirm.

In 1982, appellant was indicted upon the offense of murder and with being a persistent felony offender in the first degree. Pursuant to a plea bargain with the

¹ Senior Judge Michael L. Henry 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.

Commonwealth, appellant pleaded guilty to murder and was sentenced to life imprisonment. Subsequently, appellant filed motions under CR 60.02 and Ky. R. Crim. P. 11.42, which were denied. Then, on July 11, 2006, appellant filed a second CR 60.02 motion seeking to set aside the judgment of imprisonment based upon newly discovered evidence. In denying the motion for CR 60.02 relief, the circuit court concluded:

[T]he defendant's motion is in no way timely, does not, in fact, on its face, involve any issue of “newly discovered evidence,” and does not, on its face, offer any basis for this Court to believe that the prospective application of the judgment is no longer equitable, or any other reason of an extraordinary nature justifying relief.

This appeal follows.

Appellant filed a *pro se* brief with our Court, and his allegations of error are difficult to discern. Appellant particularly argues:

To be more specific and clarify to this court in the simple language of a *pro se* litigant, is that his sentence is in violation of Kentucky Revised Statute, 532.020 that mandates “Classification” and/or “designation” of an offense in the State of Kentucky.

It's further noted this error was committed by the sentencing court, Continental Tire vs. Looper, ___ S.W.3d. ___ 2006 WL 369116 (Ky.App. Dec. 15, 2006) [sic] (No. 2005-CA-002619-WC) due to the face of the record dictates [sic] this Appellant is not sentenced to “Wanton Murder[,]” “Intentional Murder[,]” “Capital Murder[,]” and/or any form of “Manslaughter.[.]” See: [Appendix page 1] as well as compare the fortified components of Kentucky Revised Statute, 507.202(1) (b) as this zealously explains Hines Judgment is in violation of our “Equal Protection Clause.” See: United States Constitution Amendment 14th Sub. Sect. (1) and/or the Kentucky Constitution Section 2 [sic].

Appellant's Brief at 2.

Appellant has failed to demonstrate entitlement to relief under CR 60.02. In particular, he failed to demonstrate that there exists a substantial miscarriage of justice or extraordinary circumstances justifying relief under CR 60.02. *See Wilson v. Commonwealth*, 403 S.W.2d 710 (Ky. 1966); *Lewallen v. Commonwealth*, 584 S.W.2d 748 (Ky.App. 1979). Accordingly, we hold that the circuit court properly denied appellant's CR 60.02 motion.

For the foregoing reasons, the order of the Warren Circuit Court is affirmed.

ALL CONCUR.

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