

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-002201-MR

JOHN BRUCE CAMPBELL

APPELLANT

v. APPEAL FROM BOONE CIRCUIT COURT
HONORABLE KEVIN M. HORNE, SENIOR JUDGE
INDICTMENT NO. 91-CR-00034

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AFFIRMING

** ** *

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

DIXON, JUDGE: Appellant, John Bruce Campbell, appeals *pro se* from an order of the Boone Circuit Court denying his motion for relief pursuant to CR 60.02. Finding no error, we affirm.

This case has a lengthy procedural history. In 1991, Appellant was convicted in the Boone Circuit Court of the first-degree manslaughter of two-year-old Andrew Boldman and the first-degree assault of three-year-old Aaron Ramey. He was

¹ Senior Judge J. 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.

sentenced to a total of forty years imprisonment. Appellant's convictions and sentence were affirmed by the Kentucky Supreme Court in an unpublished opinion rendered May 27, 1993. *Campbell v. Commonwealth*, 92-SC-065-MR. In 1994, Appellant filed an RCr 11.42 motion in the trial court alleging ineffective assistance of counsel. The trial court's order denying post-conviction relief was affirmed in an unpublished opinion by this Court on November 21 1997. *Campbell v. Commonwealth*, 94-CA-002762-MR.²

Appellant thereafter filed a “Motion for hearing on Modification of Sentence,” wherein he presented the same claims he sets forth in this appeal. The motion was denied in 1995 and no appeal was taken. Appellant's first CR 60.02 motion was filed in July 2005, and reiterated the same claims set forth in his prior motion for modification. The CR 60.02 motion was denied on October 10, 2005 and, again, no appeal was taken. On May 5, 2006, Appellant filed a “Petition for Impeachment and Removal from Office,” claiming a conspiracy by the government and in particular, the Boone County Commonwealth's Attorney. Shortly thereafter, Appellant also filed a motion to reconsider the trial court's October 2005 order denying CR 60.02 relief. At the same time, he filed a second CR 60.02 motion that essentially set forth the same claims as the first CR 60.02 motion. The trial court denied all pending motions on June 6, 2006. This appeal ensued.³

² Appellant's cases 94-CA-2762, 94-CA-2960, 95-CA-2040 were consolidated for joint consideration.

³ Shortly after the notice of appeal was filed, the Public Advocate filed a motion to withdraw on the grounds that this post-conviction proceeding is not one “that a reasonable person with adequate means would be willing to bring at his own expense.” KRS 31.110(2)(c). This Court granted the motion and Appellant filed a *pro se* brief.

Appellant's arguments in this Court, as in the trial court, are extremely convoluted and essentially nonsensical. As aptly summarized by the Commonwealth, Appellant believes that he was illegally convicted through fraud and misconduct on the part of the courts, Boone County Commonwealth's Attorney, Attorney General, police, Department of Corrections, trial counsel and appellate counsel. Appellant claims that various officials throughout the course of this litigation have denied him access to the courts, covered up the murder of a witness, withheld evidence, committed perjury and falsified the record. Notably however, although he makes repeated references in his brief to these “countless violations of law and due process rights,” Appellant fails to set forth any factual allegations to support his claims.

CR 60.02 allows a judgment to be corrected or vacated based “upon facts or grounds, not appearing on the face of the record and not available by appeal or otherwise, which were not discovered until after rendition of judgment without fault of the parties seeking relief.” *Barnett v. Commonwealth*, 979 S.W.2d 98, 101 (Ky. 1998) (Citing *Davis v. Home Indemnity Company*, 659 S.W.2d 2d 185, 188 (Ky. 1983)). CR 60.02 is not intended as an additional opportunity to relitigate the same issues that could “reasonably have been presented” by direct appeal or RCr 11.42 proceedings. *See McQueen v. Commonwealth*, 948 S.W.2d 415, 416 (Ky. 1997), *cert. denied*, 521 U.S. 1130 (1997) (Quoting RCr 11.42(3)). In order to be eligible for CR 60.02 relief, the movant must demonstrate why he is entitled to extraordinary relief. *Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983). Further, for a movant to receive an evidentiary hearing, “he

must affirmatively allege facts which, if true, justify vacating the judgment and further allege special circumstances that justify CR 60.02 relief.” *Id.*

“The standard of review of an appeal involving a CR 60.02 motion is whether the trial court abused its discretion.” *White v. Commonwealth*, 32 S.W.3d 83, 86 (Ky.App. 2000); *Brown v. Commonwealth*, 932 S.W.2d 359, 361 (Ky. 1996).

We will affirm the lower court's decision unless there is a showing of some “flagrant miscarriage of justice.” *Gross, supra*, at 858. Moreover, where the defendant's motion is merely one of successive motions only stating grounds that were raised or could have been raised, denial of the motion will not be reviewed on appeal. *Hampton v. Commonwealth*, 454 S.W.2d 672 (Ky. 1970).

The allegations set forth in Appellant's second CR 60.02 motion were the same as those alleged in his first CR 60.02 motion, as well as in his RCr 11.42 motion and the other numerous motions he filed. All of the motions were considered by the trial court and found to be wholly lacking in factual support. We agree that Appellant's conspiracy theories are nothing more than supposition and are unfounded by the record and evidence. We would note that Appellant admitted in a written confession to committing the crimes for which he was convicted. As our Supreme Court noted on direct appeal, “[t]he evidence against appellant was overwhelming and the crimes he committed unspeakable.”

Nor are we persuaded by Appellant's argument that the trial court erred in denying his petition to impeach the Boone County Commonwealth's Attorney on the

grounds of official misconduct, perjury, dereliction of duty, obstruction of justice, malfeasance and conspiracy. The trial court concluded that, “[p]ursuant to KRS §63, petitions for impeachment are properly addressed to the House of Representatives. Therefore, this Court is without authority to issue such an order.” We are of the opinion that the trial correctly ruled that it was not the proper forum for Appellant's grievance.

The order of the Boone Circuit Court denying Appellant relief pursuant to CR 60.02 is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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