

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-002377-MR

WALTER LAND NAYLOR

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE GARY D. PAYNE, JUDGE
ACTION NO. 98-CR-00644

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: DIXON, STUMBO AND WINE, JUDGES.

WINE, JUDGE: On June 23, 1998, a Fayette County grand jury indicted Walter Land Naylor on four counts of solicitation to commit murder, KRS 506.030 and 507.020. The charges arose from Naylor's attempts to arrange for the murder of his girlfriend, Linda Christeon, and her child. On October 16, 1998, Naylor filed a motion to withdraw his guilty plea and accept the Commonwealth's offer on a plea of guilty. In exchange for his guilty plea on two of the counts, the Commonwealth agreed to dismiss the remaining two counts and to recommend a sentence of fifteen years on each count. After accepting

Naylor's guilty plea, the trial court sentenced Naylor to a total of thirty years, in accord with the Commonwealth's recommendation.

Eight years later, on October 3, 2006, Naylor filed a motion pursuant to CR 60.02(f) to alter or amend his sentence. He argued that since his actions to solicit the murders involved a single course of conduct, he could not be convicted of two counts of solicitation to commit murder. The trial court disagreed, finding that the evidence supported the separate charges. Consequently, the trial court denied the motion. This appeal followed.

The purpose of CR 60.02 is to permit the court to correct errors in a judgment which: (1) had not been put into issue or passed on, (2) were unknown and could not have been known to the party by the exercise of reasonable diligence and in time to have been otherwise presented to the court, or (3) which the party was prevented from so presenting by duress, fear, or other sufficient cause. *Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983). The first five subsections of CR 60.02 lay out specific grounds for relief, while CR 60.02(f) permits a court to relieve a party from its final judgment for "any other reason of an extraordinary nature justifying relief." CR 60.02(f) requires a movant to show extraordinary circumstances warranting such relief. *Commonwealth v. Bustamonte*, 140 S.W.3d 581, 583 (Ky.App. 2004). The standard of review from an order granting or denying relief under CR 60.02(f) is whether the trial court abused its discretion. *Dull v. George*, 982 S.W.2d 227, 229 (Ky.App. 1998), *citing*

Bethlehem Minerals Company v. Church and Mullins, Corp., 887 S.W.2d 327, 329 (Ky. 1994).

We find that Naylor's motion does not show any extraordinary circumstances warranting relief from his sentence. First, a motion brought under CR 60.02(f) must be brought "within a reasonable time." The basis for the motion involves only the sufficiency of the allegations in the indictment, and any such defect should have been apparent at the time he entered his guilty plea. Naylor makes no showing that he exercised reasonable diligence in bringing this motion to the court.

Second, it is well-established that a knowing and voluntary plea of guilty waives any defense that a defendant may have except failure of the indictment to charge an offense. *Bush v. Commonwealth*, 702 S.W.2d 46 (Ky. 1986). Further, a claim of insufficient evidence must be made on direct appeal, not in a post-conviction motion. *See Boles v. Commonwealth*, 406 S.W.2d 853, 855 (Ky. 1966). Therefore, any lack of specificity in the indictment is not properly presented on a motion pursuant to CR 60.02(f).

And finally, the record clearly refutes Naylor's contention that the Commonwealth's proof only supports a single charge of solicitation to commit murder. As part of the plea agreement, the Commonwealth agreed to dismiss the charges that Naylor attempted to solicit the murder of Christeon's child. However, the Commonwealth presented evidence that Naylor solicited two different individuals, on two separate occasions, to have Christeon killed. These facts would clearly support

separate charges. *See Wyatt v. Commonwealth*, 219 S.W.3d 751 (Ky. 2007).

Consequently, the trial court did not abuse its discretion in denying Naylor's motion to alter his sentence.

Accordingly, the order of the Fayette Circuit Court denying Naylor's CR 60.02(f) motion is affirmed.

ALL CONCUR.

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