

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000551-MR

BRIAN E. JONES

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE MITCHELL PERRY, JUDGE
INDICTMENT NO. 02-CR-000473

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

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

LAMBERT, JUDGE: Brian Jones appeals from a denial of his 60.02 Petition for Sentence Judgment Nunc Pro Tunc. For the reasons set forth herein, we affirm.

On February 26, 2002, a Jefferson County Grand Jury indicted Brian Jones for two counts of robbery in the first degree, one count of burglary in the first degree, one count of possession of a handgun by a minor, one count of tampering with physical

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.

evidence, one count of assault in the first degree, and one count of assault in the second degree. In consideration for dismissing one count of robbery in the first degree, Jones entered a guilty plea to the remaining charges and was sentenced to ten years. He was remanded to the Department of Juvenile Justice until the age of eighteen.

Jones was returned to court on November 8, 2004, for his eighteenth birthday Youthful Offender Sentencing. A judgment was issued releasing him on probation for five years, but his probation was revoked by court order August 15, 2005.

Jones filed a CR 60.02 Petition for Sentence Judgment Nunc Pro Tunc on December 18, 2006. The Motion was denied by the Jefferson Circuit Court for failure to present a valid basis for relief under CR 60.02(f) as well as for being untimely. This appeal followed.

We review a trial court's ruling denying a 60.02 Motion for an abuse of discretion. *See Barnett v. Commonwealth*, 979 S.W.2d 98, 102 (Ky. 1998); *Brown v. Commonwealth*, 932 S.W.2d 359, 362 (Ky. 1996); *White v. Commonwealth*, 325 S.W.3d 83 (Ky.App. 2000). For a trial court to have abused its discretion, its decision must have been arbitrary, unreasonable, unfair, or unsupported by sound legal principles. *Clark v. Commonwealth*, 223 S.W.3d 90, 95 (Ky.2007).

The Supreme Court of Kentucky has held that CR 60.02:

allows appeals based upon claims of error that “were unknown and could not have been known to the moving party by exercise of reasonable diligence and in time have been otherwise presented to the court.” (citations omitted). CR 60.02 is the codification of the common law writ of coram nobis, which allows a judgment to be corrected or vacated

“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.” (citations omitted)

Barnett, 979 S.W.2d at 101.

Jones's concerns regarding double jeopardy issues involved in his conviction existed in 2002 and could have been brought at sentencing. Therefore, Jones clearly fails to present claims that were “unknown and could not have been known” at the time of his judgment. Accordingly, we find the trial court's decision to deny his 60.02 Motion to be based on sound legal principles and affirm the Judgment of the Jefferson Circuit Court.

ACREE, JUDGE, CONCURS.

ROSENBLUM, SENIOR JUDGE, CONCURS IN RESULT ONLY.

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