

# Commonwealth of Kentucky

## Court of Appeals

NO. 2007-CA-000628-MR

JAMES CLIFFORD LEACH

APPELLANT

v. APPEAL FROM BOYLE CIRCUIT COURT  
HONORABLE DARREN W. PECKLER, JUDGE  
ACTION NO. 84-CR-00025

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: STUMBO AND WINE, JUDGES; GUIDUGLI,<sup>1</sup> SENIOR JUDGE.

GUIDUGLI, SENIOR JUDGE: This is an appeal from the denial of a motion pursuant to CR 60.02. We affirm.

Leach was convicted of murder, first-degree manslaughter, first-degree robbery, and first-degree burglary. He received a sentence of life imprisonment. The facts underlying Leach's heinous crimes were fully set forth by the Supreme Court of Kentucky in its unpublished opinion affirming Leach's convictions on direct appeal.

<sup>1</sup> Senior Judge Daniel T. Guidugli sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

*Leach v. Commonwealth*, 85-SC-176-MR (rendered May 22, 1986). We will not recount them here. However, we note that the Supreme Court found that the convictions were supported by “overwhelming evidence.”

On January 30, 2007, more than twenty years after his conviction, Leach made a motion to vacate the judgment and sentence pursuant to CR 60.02. Leach also requested the appointment of counsel and an evidentiary hearing. The trial court denied each request. Leach argues that the trial court abused its discretion by failing to appoint him counsel and denying his motion for relief.

CR 60.02 is an extraordinary remedy. *Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983). The relief afforded by this rule is also discretionary and must be made within a “reasonable time.” *Id.* at 857. Further, defendants are not entitled to appointed counsel for CR 60.02 proceedings. *Id.*

Leach makes various claims of actual innocence and ineffective assistance of counsel including the assertion that his trial counsel never provided him with a copy of the opinion affirming his conviction on direct appeal. However, Leach admitted that he learned about the decision of the Supreme Court in 2004, over two years prior to filing his motion. His other ineffective assistance of counsel claims are remote and would have been more properly addressed in a motion pursuant to RCr 11.42. Regarding the affidavits in support of Leach's claims of actual innocence, he obtained these statements in 2005, more than two years prior to filing his CR 60.02 motion. “Newly discovered” evidence must be presented within a year after the judgment, or at least within a year

after discovery. *See McQueen v. Commonwealth*, 948 S.W.2d 415, 417 (Ky. 1997).

Leach has demonstrated nothing of a conclusive and compelling nature as would entitle him to relief. The trial court did not abuse its discretion in denying Leach's motion pursuant to CR 60.02.

Accordingly, the order of the Boyle Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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