

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-000749-MR

WILLIAM RALPH GRAHAM

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JAMES M. SHAKE, JUDGE
ACTION NOS. 94-CR-000186 & 94-CR-000428

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: CLAYTON AND VANMETER, JUDGES; KNOFF,¹ SENIOR JUDGE.

VANMETER, JUDGE: A criminal defendant seeking relief from a judgment, based on extraordinary grounds under CR² 60.02(f), must file a motion “within a reasonable time.” CR 60.02. In this instance, the Jefferson Circuit Court denied

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

² Kentucky Rules of Civil Procedure.

William Ralph Graham's motion for such relief, which was filed fourteen years after the entry of a judgment sentencing him to 55 years. Finding no error, we affirm.

In December 1994, Graham entered a guilty plea to complicity to each of the following: Murder, Assault in the First Degree, Wanton Endangerment in the First Degree, and Tampering with Physical Evidence. He received a total sentence of 55 years, to be served concurrently with a five-year sentence on another indictment. In July 2001, Graham filed an RCr³ 11.42 motion to vacate the sentence. The basis for the motion was Graham's allegation that his trial counsel afforded him ineffective assistance of counsel in advising him to reject a twenty-year plea offer, but ultimately to accept a 55-year offer. That motion was denied.

In January 2007, Graham filed the present motion under CR 60.02, setting forth a number of grounds for the requested relief. The following seven grounds are presented in this *pro se* appeal from the court's denial of his motion: that his guilty plea was coerced, involuntary, unknowing and unintelligent since he received a 55-year sentence while his co-defendant, Christopher Byers, received a 47-year sentence; that counsel was ineffective by misrepresenting facts regarding parole eligibility, by failing to investigate mitigating circumstances, and by misrepresenting a possible death sentence; that he was not psychologically competent during the plea and sentencing process, and that counsel was incompetent by failing to recognize same; that he was denied equal protection

³ Kentucky Rules of Criminal Procedure.

since Byers' sentence was seven years shorter than his; that the indictment violated double jeopardy, that the judgment was *ex post facto*; and that counsel was incompetent by failing to investigate adequately.

Unfortunately for Graham, "the entry of a valid guilty plea effectively waives all defenses other than that the indictment charged no offense." *Thompson v. Commonwealth*, 147 S.W.3d 22, 39 (Ky. 2004) (citing *Quarles v. Commonwealth*, 456 S.W.2d 693, 694 (Ky. 1970)). Once a guilty plea is entered, the defendant may not raise independent claims of violations of constitutional rights. *Thompson*, 147 S.W.3d at 39. Thus, Graham's claims related to equal protection, double jeopardy, and *ex post facto* violations are procedurally barred.

All of Graham's claims of ineffective assistance of counsel are likewise barred. The Kentucky Supreme Court has stated that "CR 60.02 is not intended merely as an additional opportunity to raise *Boykin*^[4] defenses. It is for relief that is not available by direct appeal and not available under RCr 11.42. The movant must demonstrate why he is entitled to this special, extraordinary relief." *Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983). Like *coram nobis*, the purpose of CR 60.02 is to correct errors upon a showing of "facts or grounds, not appearing on the face of the record and not available by appeal or otherwise, which were discovered after the rendition of the judgment without fault of the party seeking relief." *Harris v. Commonwealth*, 296 S.W.2d 700, 701 (Ky. 1956). See also *McQueen v. Commonwealth*, 948 S.W.2d 415, 416 (Ky. 1997) (purpose of CR

⁴ *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

60.02 is to bring forward “errors in matter of fact which . . . 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”). Further, a “criminal judgment may be set aside only in extraordinary and emergency cases where the showing made is of such a conclusive character as to indicate the verdict most probably would not have been rendered and there is a strong probability of a miscarriage of justice.” *Harris*, 296 S.W.2d at 702.

The foregoing leaves only Graham’s allegation that his plea was involuntary and that his psychological state bore further evaluation. However, Graham makes no showing that anything raised in the current motion could not have been raised by the exercise of due diligence, and brought to the attention of the trial court within a reasonable period of time after entry of the judgment. *See Harris*, 296 S.W.2d at 702.

In this case, Graham and three other persons participated in a 1994 drive-by shooting of a car in which Melissa Young was murdered and Stephen Ritchings was blinded. A third person who was in the car’s rear seat was uninjured. By the time Graham plead guilty in December 1994, his co-defendant Christopher Byers had gone to trial in September 1994, had been convicted on three counts,⁵ and had received a sentence of 47 years. Graham and the driver of the car in which Byers and Graham were riding at the time of the shooting were to be tried jointly on December 13, 1994. A careful review of the record shows that

⁵ The counts on which Byers was convicted were Complicity to Murder, Assault in the First Degree, and Wanton Endangerment in the First Degree.

the main issue at any trial of Graham would have been whether he was the actual triggerman on the night in question. In that regard, Byers had testified at his own trial that Graham was the shooter. Additionally, the Commonwealth had notified Graham's counsel that it intended to introduce witness testimony that (1) Graham possessed a .357 magnum on the night of the shootings, and (2) Graham had admitted to being the shooter.

Graham was represented by counsel at all stages of the proceeding prior to and including sentencing. He and his counsel had the benefit of Byers' prior trial, including the ability to weigh and consider the Commonwealth's evidence and that jury's verdict, in deciding whether to enter a plea agreement. Given the overwhelming evidence against Graham, including his admissions regarding participation, the statements of all the other witnesses as to Graham's involvement, and Graham's assistance to the police in the recovery of the murder weapon, Graham makes no showing that "the verdict most probably would not have been rendered and there is a strong probability of a miscarriage of justice." *Id.* at 702.

The Jefferson Circuit Court's judgment is affirmed.

ALL CONCUR.

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