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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2025-CA-0399-MR

JASON MAJORS — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JENNIFER WILCOX, JUDGE
ACTION NO. 11-CR-002400

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: THOMPSON, CHIEF JUDGE; McNEILL AND MOYNAHAN, JUDGES.

McNEILL, JUDGE: Jason Majors ("Majors") appeals from the Jefferson Circuit Court's denial of his CR[1] 60.02 motion to vacate his conviction and sentence.

Finding no error, we affirm.

[1] Kentucky Rules of Civil Procedure.

BACKGROUND

In 2011, Majors was indicted by a Jefferson County grand jury for murder, tampering with physical evidence, and stalking. A jury subsequently convicted him of tampering with physical evidence but was unable to reach a verdict on the murder and stalking charges, and a mistrial was declared. Thereafter, Majors pled guilty to murder and stalking in exchange for a total recommended sentence of twenty years. The trial court accepted the recommendation and sentenced Majors accordingly.

Over eight years later, Majors sought a copy of the recording of the grand jury testimony in his case. When unsuccessful, he filed a *pro se* motion under CR 60.02(d), (e), and (f) to vacate his sentence, alleging impropriety in the grand jury process that invalidated the indictment. Essentially, he claimed that because he was not provided with a copy of the grand jury testimony recording, he could not verify whether the process conformed to the law. He further alleged he was denied a copy of the recording in violation of RCr[2] 5.16(3). The circuit court summarily denied the motion as "without factual basis or legal merit." This appeal followed.

[2] Kentucky Rules of Criminal Procedure.

STANDARD OF REVIEW

"We review the denial of a CR 60.02 motion for an abuse of discretion." *Diaz v. Commonwealth*, 479 S.W.3d 90, 92 (Ky. App. 2015) (citation omitted). "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999). We will affirm the lower court's decision unless there is a showing of some "flagrant miscarriage of justice." *Gross v. Commonwealth*, 648 S.W.2d 853, 858 (Ky. 1983)).

ANALYSIS

On appeal, Majors argues the circuit court erred in denying his CR 60.02 motion. His *pro se* brief is not easy to follow, and his arguments are not always clear. However, he essentially repeats the arguments he made in his motion to the circuit court, claiming his rights were violated because he did not receive a recorded copy or transcript of the grand jury proceedings in his underlying case. The Commonwealth responds that Majors' CR 60.02 motion was untimely and procedurally improper. We agree.

Although not cited as grounds for the denial of Majors' CR 60.02 motion, we may affirm the circuit court for any reason supported by the record. *See McCloud v. Commonwealth*, 286 S.W.3d 780, 786 n.19 (Ky. 2009) ("The fact that the trial court's decision to deny the motion to suppress was based upon

different reasoning . . . does not alter our result because it is well-settled that an appellate court may affirm a lower court for any reason supported by the record.").

As to untimeliness, Majors' motion was brought pursuant to CR 60.02(d), (e), and (f). Motions under CR 60.02(d), (e), and (f) must be made "within a reasonable time." While what is reasonable varies from case to case, courts have held CR 60.02 motions filed with delays like the eight-year delay in this case untimely. *See Reyna v. Commonwealth*, 217 S.W.3d 274, 276 (Ky. App. 2007) (four-year delay unreasonable); *Gross v. Commonwealth*, 648 S.W.2d 853, 858 (Ky. 1983) (five-year delay unreasonable); *Graves v. Commonwealth*, 283 S.W.3d 252, 257 (Ky. App. 2009) (seven-year delay unreasonable). Further, Majors has offered no reasonable explanation for the delay. Majors could have raised his allegations, which concern the grand jury proceeding, at any point during his case, including immediately after the court's judgment. And yet, he waited eight years. Under these circumstances, we cannot say his motion was filed within a reasonable time.

But perhaps more importantly, Majors' CR 60.02 motion was procedurally improper. Majors seeks production of the transcript of the grand jury proceedings in his underlying indictment, eight years after his conviction and sentencing. He argues the circuit court should vacate his conviction on

unsupported allegations of fraud in the grand jury proceeding and the fact that he has not received the recording.

However, Majors could and should have raised these issues before he was convicted and sentenced. 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 to have been otherwise presented to the court." *Barnett v. Commonwealth*, 979 S.W.2d 98, 101 (Ky. 1998) (internal quotation marks and citation omitted); *see also U.S. Bank, NA v. Hasty*, 232 S.W.3d 536, 541–42 (Ky. App. 2007) (citing *Fortney v. Mahan*, 302 S.W.2d 842, 843 (Ky. 1957)) ("[O]ne of the chief factors guiding the granting of CR 60.02 relief is the moving party's ability to present his claim prior to the entry of the order sought to be set aside.").

Moreover, "CR 60.02 is not a separate avenue of appeal to be pursued in addition to other remedies, but is available only to raise issues which cannot be raised in other proceedings." *McQueen v. Commonwealth*, 948 S.W.2d 415, 416 (Ky. 1997). As noted above, Majors' challenges could have been raised before the judgment was entered, on appeal from a conditional guilty plea, or in a RCr 11.42 motion. "The structure provided in Kentucky for attacking the final judgment of a trial court in a criminal case is not haphazard and overlapping, but is organized and complete. That structure is set out in the rules related to direct appeals, in RCr

11.42, and *thereafter* in CR 60.02." *Gross*, 648 S.W.2d at 856. Majors' waiver of these other remedies precludes him from raising these issues through CR 60.02.

Finally, even if timely and procedurally proper, we would still affirm the circuit court's denial of Majors' CR 60.02 motion. Majors seeks to vacate his conviction and sentence because he has been unable to obtain a transcript of the grand jury proceedings eleven years later. However, he is not entitled to post-conviction discovery of the grand jury transcripts under RCr 5.16. *Wagner v. Commonwealth*, 247 S.W.3d 540, 542 (Ky. App. 2008). Further, "[t]he burden of proof in a CR 60.02 proceeding falls squarely on the movant to affirmatively allege facts which, if true, justify vacating the judgment and further allege special circumstances that justify CR 60.02 relief." *Foley v. Commonwealth*, 425 S.W.3d 880, 885 (Ky. 2014) (internal quotation marks and citations omitted). Majors has only made a conclusory allegation of "flagrant abuse of the grand jury process." Essentially, his argument is: we do not know whether the grand jury process was legitimate because we do not have the transcript to see whether anything about it was illegitimate. He has not affirmatively alleged any facts that, if true, would justify vacating the judgment, much less special circumstances that justify CR 60.02 relief.

CONCLUSION

Accordingly, the Jefferson Circuit Court's order denying Majors' CR 60.02 motion to vacate his conviction and sentence is affirmed.

ALL CONCUR.

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