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NOT TO BE PUBLISHED

# Commonwealth of Kentucky
# Court of Appeals

NO. 2025-CA-0883-MR

CHRISTOPHER ALEXANDER POPE — APPELLANT

v.

APPEAL FROM LINCOLN CIRCUIT COURT
HONORABLE TERESA WHITAKER, JUDGE
ACTION NO. 18-CR-00152

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CETRULO, ECKERLE, AND MOYNAHAN, JUDGES

ECKERLE, JUDGE: Appellant, Christopher Alexander Pope ("Pope"), seeks reversal of the Lincoln Circuit Court's June 10, 2025, Order denying his motion pursuant to Kentucky Rule of Civil Procedure ("CR") 60.02(f) to vacate his 2019 conviction for first-degree trafficking in a controlled substance (heroin) and being a first-degree persistent felony offender ("PFO"). Finding no extraordinary grounds justifying relief, we affirm.

## I. Factual and Procedural Background

We have already evaluated Pope's conviction once on appeal, and the Supreme Court has done so twice. On first direct appeal, the Kentucky Supreme Court affirmed his conviction, adducing the following facts:

> Pope was indicted by a Lincoln County grand jury for trafficking in a controlled substance and being a first-degree PFO. The charges stemmed from Pope selling heroin to a confidential informant during a controlled buy. The controlled buy was arranged by deputies from the Boyle County Sheriff's Department who apparently anticipated that it would occur in Boyle County. However, when the buy was set in motion Pope told the confidential informant that he would not make the sale in Boyle County. Instead[,] Pope instructed the informant to meet him at a fast-food restaurant in adjoining Lincoln County. The Boyle County deputies followed the informant to that location and surveilled the drug transaction. Notably, the deputies received prior verbal approval from the Lincoln County Sheriff's Department for their investigative activities in Lincoln County.
>
> Pope communicated with the confidential informant via Snapchat. At one point, Pope instructed the informant to leave his vehicle unlocked when he went into the restaurant. When the informant met with Pope inside the restaurant, Pope told him that the heroin had already been placed in the glove compartment of his vehicle. The informant then paid Pope and returned to Boyle County.
>
> The Boyle County deputies later testified that they surveilled the entire transaction. One officer observed Pope arrive, approach the passenger door of the informant's vehicle, and then enter the restaurant where he had a discussion with the informant. Afterward, the

> officers met the confidential informant in Boyle County where he gave them the purchased heroin.
>
> Following the Lincoln County grand jury's indictment of Pope, a Boyle County officer arrested him in Boyle County. As noted, a Lincoln County jury found Pope guilty of trafficking in a controlled substance, first degree and, following his guilty plea to the charge of PFO I, recommended a sentence of twenty years. The trial court sentenced Pope accordingly and entered judgment.

*Pope v. Commonwealth*, 629 S.W.3d 5, 7 (Ky. 2021) *reh'g denied* (Aug. 26, 2021).

For purposes of this appeal, we supplement this recitation of facts by identifying Tanner Abbott ("Abbott"), who was one of the Boyle County Sheriff's deputies who coordinated the controlled transaction and surveillance and also the deputy who arrested Pope after his indictment. The uniform citation documenting Pope's arrest, dated January 5, 2018, stated that Abbott arrested Pope in Boyle County. Record ("R.") at 5. However, during trial, Abbott testified that he arrested Pope at Pope's apartment in Lincoln County and transported him to the Boyle County Detention Center where Abbott executed the warrant of arrest upon indictment. Video Record ("V.R."), 6/6/2019 at 2:31:02-08.

In affirming Pope's conviction on direct appeal, the Kentucky Supreme Court denied his claims of error on all grounds. *Pope*, 629 S.W.3d at 14. First, the Supreme Court held that the Boyle County deputies' conducting of the controlled buy in Lincoln County was neither extra-jurisdictional nor unauthorized

under Kentucky Revised Statutes ("KRS") 431.007 or 218A.240. Second, it opined that, even if the deputies had violated these jurisdictional statutes, the evidence that they obtained was not subject to exclusion absent a violation of constitutional rights, which Pope did not allege. *Pope*, 629 S.W.3d at 12-13. Finally, the Supreme Court held that the Trial Court did not abuse its discretion by admitting photographs of the Snapchat messages between Pope and the informant over Pope's objection and without granting him a continuance. *Id*. at 14. The Supreme Court then denied Pope's petition for a rehearing.

Pope filed a post-conviction motion pursuant to Kentucky Rule of Criminal Procedure ("RCr") 11.42, raising numerous allegations of ineffective assistance of counsel at trial and on appeal. The Trial Court denied Pope's post-conviction motion, and we affirmed unanimously, opining that none of Pope's allegations of ineffective assistance of counsel warranted relief. *Pope v. Commonwealth*, No. 2022-CA-1093-MR, 2023 WL 5809723, at *8 (Ky. App. Sep. 8, 2023), *discretionary review granted in part and denied in part* (Ky. Mar. 6, 2024). The Kentucky Supreme Court affirmed on nearly all grounds, but on partial discretionary review, it remanded the case to the Trial Court for an evidentiary hearing on the sole issue of whether trial counsel provided ineffective assistance with respect to a potential, conditional plea.

Prior to such evidentiary hearing, a years-long federal investigation of

Abbott culminated in his conviction for depriving arrestees of their civil rights under color of law while acting as a deputy with the Boyle County Sheriff's Office. Abbott was also convicted of conspiracy to falsify police reports in order to impede the federal investigation of his crimes.

On June 8, 2024, Pope moved to vacate his sentence pursuant to CR 60.02(f), arguing that he was entitled to relief due to "newly discovered evidence." R. at 82-107, 91-92. Pope argued that Abbott had led a "malicious investigation" against him, falsified documents, and committed perjury before the Lincoln County Grand Jury. R. at 87. To support these claims, Pope referenced three sources. First, without supplying a transcript, Pope alluded to Abbott's testimony before the Lincoln County Grand Jury, during which Pope claims that Abbott testified as follows:

> [T]hat he witnessed [Pope] arrive at Arby's, then 10 to 15 minutes later get back into vehicle leave Arby's. Abbott also tells the Grand Jury "Pope got into confidential witness vehicle and put the heroin into the car."

R. at 99 (citing a claimed "Grand Jury transcript," which is not attached as an appendix and not part of the Trial Record). Second, Pope produced various dispatch records, logs, and open-records responses from various law enforcement agencies, purporting to show that Abbott lied about contacting the Lincoln County Sheriff. Third, Pope produced the indictment and news report concerning Abbott's

federal conviction, supposing "that Abbott has a custom and practice to falsify documents, abuse his authority, [and] violate citizens' civil rights." R. at 102. Based on this alleged evidence, Pope claims that Abbott deprived him of due process of law.

On August 6, 2024, as instructed by the Kentucky Supreme Court, the Trial Court conducted an evidentiary hearing on the sole remanded issue of whether Pope's trial counsel had provided ineffective assistance by advising Pope to reject a conditional plea offer. However, Pope and his former counsel testified that the Commonwealth had never presented Pope or his counsel with a conditional plea offer to consider.

The Trial Court then addressed Pope's CR 60.02 motion, which was docketed for a hearing. Nonetheless, Pope offered no testimony or witnesses in support of the complaints that he had lodged against Abbott. Pope did not even make an additional oral argument. He did renew his written motion for leave to file a sur-reply, which the Trial Court granted. Without objection, the Trial Court took both motions under advisement. On May 23, 2025, the Trial Court denied Pope's RCr 11.42 motion. On June 10, 2025, after Pope had filed his sur-reply, the Trial Court denied his CR 60.02 motion. Pope appeals only the denial of his CR 60.02 motion, and we confine our review accordingly.

On appeal, Pope claims that the Trial Court abused its discretion by

finding that he was not entitled to extraordinary relief pursuant CR 60.02(f). First, Pope alleges that the Trial Court erred by summarily denying his claims as either matters which could and should have been litigated on direct appeal or as untimely. He also contends that the Trial Court issued its conclusions without conducting an evidentiary hearing and without otherwise reaching the merits.

This first claim is simply false because the Trial Court clearly afforded him a hearing, during which he declined to present additional evidence not previously submitted in writing. Further, the Trial Court's Order specifically addressed the merits of his argument.

Second, Pope asserts that he is entitled to relief under CR 60.02(f) because his arrest outside of Boyle County deprived him of his constitutional right to due process. Finally, Pope alleges that the "new evidence" he obtained through a series of open records requests, along with Abbott's federal conviction, substantiate his claims. Specifically, he attempts to extrapolate that Abbott committed perjury before the Lincoln County Grand Jury, lied about contacting the Lincoln County Sheriff, tainted evidence, and falsified records. Pope asks this Court to reverse the Trial Court and remand with instructions to dismiss his indictment. The Commonwealth argues that the Trial Court correctly denied Pope's CR 60.02 motion as his claims were already decided on direct appeal, were untimely, and are insufficient to warrant relief.

## II. Standard of Review

In the recent case of *Wilkey v. Commonwealth*, we explained that CR 60.02 codifies the writ of *coram nobis* and "preserves but does not extend" that common law doctrine. 737 S.W.3d 791, 794 (Ky. App. 2026) (citing *Baze v. Commonwealth*, 276 S.W.3d 761, 766 (Ky. 2008)). As the Kentucky Supreme Court has explained, CR 60.02 "is an extraordinary and residual remedy to correct or vacate a judgment 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 party seeking relief." *Baze*, 276 S.W.3d at 766. Moreover, the structure "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 v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983). The Kentucky Supreme Court has made "abundantly clear through [its] decisions that CR 60.02 and RCr 11.42 motions are not to be used to relitigate previously determined issues." *Baze*, 276 S.W.3d at 766.

Finally, the decision regarding "whether a defendant is entitled to the extraordinary relief provided by CR 60.02 is a matter left to the sound discretion of the court and the exercise of that discretion will not be disturbed on appeal except for abuse." *Woodall v. Commonwealth*, 709 S.W.3d 71, 76 (Ky. 2024), *reh'g*

*denied* (Mar. 20, 2025) (internal quotation marks and citations omitted). Accordingly, we review the Trial Court's denial of a CR 60.02 motion for abuse of that discretion. *White v. Commonwealth*, 32 S.W.3d 83, 86 (Ky. App. 2000). "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); *see also Foley v. Commonwealth*, 425 S.W.3d 880, 886 (Ky. 2014).

## III. Analysis

As a preliminary matter, we decline to entertain further Pope's mendacious assertion that the Trial Court denied him an evidentiary hearing. We need not address whether Pope was entitled to an evidentiary hearing on his CR 60.02 motion because the record clearly reflects that he was afforded a hearing and declined to present testimony or witnesses. Rather, and properly, the Trial Court granted Pope's motion to file a sur-reply and took his motion under submission.

### A. Relitigation of Claims, CR 60.02, and the Law of the Case

Turning to the merits, we find, as did the Trial Court, that Pope attempts to relitigate claims that he made on direct appeal. Specifically, Pope's claim that Abbott violated his right to due process by pursuing an investigation into Lincoln County and subsequently affecting an unlawful arrest is merely another attempt to relitigate the question of jurisdiction. The Kentucky Supreme Court

soundly rejected Pope's claim that the actions of the Boyle County Sheriff's deputies violated their statutory authority. *Pope*, 629 S.W.3d at 5, 12-13. Subsequent to that opinion, Pope had ample opportunity to address his additional claims or seek correction of the factual record via his petition for rehearing, which the Kentucky Supreme Court also denied. *Id.* Thus, if Pope wished to assert that the Kentucky Supreme Court relied on incorrect facts concerning Abbott's conduct, including whether he arrested Pope in Lincoln or Boyle County, he should have sought review of the same by that tribunal. Pope is now precluded from relitigating the question of jurisdiction pursuant to CR 60.02.

Moreover, the "law of the case" doctrine "provides that issues decided in earlier appeals should not be revisited in subsequent ones." *Brown v. Commonwealth*, 313 S.W.3d 577, 610 (Ky. 2010). "The law of the case doctrine is an iron rule, universally recognized, that an opinion or decision of an appellate court in the same cause is the law of the case for a subsequent trial or appeal however erroneous the opinion or decision may have been." *Brooks v. Lexington–Fayette Urban Cnty Hous. Auth.*, 244 S.W.3d 747, 751 (Ky. App. 2007) (internal quotation marks and citation omitted). The doctrine protects:

> the important interest litigants have in finality, by guarding against the endless reopening of already decided questions, and the equally important interest courts have in judicial economy, by preventing the drain on judicial resources that would result if previous decisions were routinely subject to reconsideration.

*Brown*, 313 S.W.3d at 610. Therefore, even if we were inclined to review the question of the Boyle County Sheriff's statutory jurisdiction, which we are not, the law of the case precludes us from doing so.

**B. Newly Discovered Evidence**

Next, we address Pope's claim that "newly discovered evidence" demonstrates that Abbott committed perjury before the Grand Jury and falsified records regarding Pope's arrest. Because Pope brought his claims more than one year after final judgment, the Trial Court held that they were untimely pursuant to CR 60.02(b) and (c). Pope claims, however, that this new evidence reveals his "actual innocence," and it is of such an extraordinary nature that it justifies vacating his sentence and dismissing the indictment. Appellant's Brief at 13, 16.

Initially, we reject the premise that newly-discovered evidence may be grounds for dismissing an indictment. The Kentucky Supreme Court has held that even if an appellant presents newly-discovered evidence,

> such would only entitle Appellant to a new trial under RCr 10.06, not to extraordinary relief under RCr 11.42 or CR 60.02. *Polsgrove v. Commonwealth*, Ky., 439 S.W.2d 776 (1969). Regardless, under either rule, a motion for relief for newly discovered evidence must be made within one year after entry of the final judgment. *Id.* at 780; CR 60.02(b).

*McQueen v. Commonwealth*, 948 S.W.2d 415, 417 (Ky. 1997). Thus, the Trial Court properly held that Pope's motion was untimely pursuant to CR 60.02(b) and (c).

Next, we address Pope's attempt to use this so-called new evidence to vacate his conviction under CR 60.02(f). In order to invoke CR 60.02(f) on the grounds of newly-discovered evidence, a movant must prove that "the new evidence, if presented originally, would have, with reasonable certainty, changed the result." *Brown v. Commonwealth*, 932 S.W.2d 359, 362 (Ky. 1996). Facts which, with the exercise of reasonable diligence, could have been brought either by direct appeal or in a RCr 11.42 proceeding, will not qualify to be brought by motion under CR 60.02(f). *Sanders v. Commonwealth*, 339 S.W.3d 427, 437 (Ky. 2011).

In light of these standards, Pope's allegations that Abbott perjured himself before the Grand Jury, lied about contacting the Lincoln County Sheriff, and lied on the uniform citation do not qualify as newly-discovered evidence. All of these claims, as well as the documentation Pope now presents to substantiate them, could have been brought on direct appeal. We note that Abbott's testimony before the Grand Jury is unreviewable because Grand Jury proceedings, other than the indictment, are not made part of the Trial Court record, and Pope did not produce a transcript. The "KYIBRS Report Narrative" Pope did produce was

discoverable before trial and includes only statements that were corroborated by the other Boyle County Sheriff's deputy.

Similarly, the dispatch reports produced in response to Pope's open-records requests were also available prior to trial. The mere fact that Pope chose to refrain from requesting those old records until now does not rebirth them into something new. Further, we discern that those records neither support nor controvert Abbot's account that he contacted the Lincoln County Sheriff's office prior to conducting his investigation into Lincoln County. Moreover, in Pope's appeal of his RCr 11.42 ineffective assistance claims, we observed that Pope had the opportunity to impeach Abbott's testimony at trial. *Pope*, 2023 WL 5809723, at *6-7. Most significantly, we opined that his counsel did, in fact, cross-examine Abbott and the other witnesses and succeeded in exposing inconsistencies in their statements. *Id.* Therefore, any new evidence regarding Abbott's credibility or that Pope's original counsel failed to present such evidence should have been presented in Pope's RCr 11.42 proceeding.

The only remaining evidence that Pope offers is Abbott's federal conviction for civil rights violations unrelated to Pope's case. The perpetration of excessive force and other crimes for which Abbott was convicted is reprehensible, but it is wholly unconnected to this matter. To wit, Pope offers no evidence that Abbott used excessive force against *him*, and the evidence of Abbott's other

actions could at most serve to impeach Abbott's testimony. Our Supreme Court has held "that newly discovered evidence that merely impeaches the credibility of a witness or is cumulative is generally disfavored as grounds for granting a new trial." *Foley v. Commonwealth*, 55 S.W.3d 809, 814 (Ky. 2000). More significantly, such evidence does not "implicate the extraordinary sort of claim contemplated under CR 60.02(f)." *Sanders*, *supra*, at 437. Therefore, we find that the evidence Pope presents in support of his CR 60.02(f) motion is neither new nor of such a nature that would justify relief.

## IV. Conclusion

After due consideration of the record and applicable law, we hold that Pope's motion to vacate his sentence was untimely, duplicative, and failed to demonstrate extraordinary circumstances that would entitle him to relief under CR 60.02(f). For the foregoing reasons, we affirm the Lincoln Circuit Court's Order denying said motion.

ALL CONCUR.

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