

IMPORTANT NOTICE
NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.

RENDERED: OCTOBER 21, 2010
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2008-SC-000245-TG
(2007-CA-002492-MR)

FINAL

DATE 3-24-11 211 AC Court P.C.

RONNIE LEE BOWLING

APPELLANT

V.

ON APPEAL FROM LYON CIRCUIT COURT
HONORABLE C.A. WOODALL, III, JUDGE
NO. 07-CI-00220

TOM SIMPSON, WARDEN
KENTUCKY STATE PENITENTIARY

APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Appellant, Ronnie Lee Bowling, appeals the Lyon Circuit Court's Order denying his petition for writ of habeas corpus. For the following reasons, we affirm the Lyon Circuit Court.

The facts of this case, as stated by this Court in a previous opinion, are as follows:

Early in the morning of January 20, 1989, and while he was working alone, Ronald L. Smith received six .38 caliber gunshot wounds-three to the back of his head, two to his mid-back near the spine, and one to the upper left side of his chest near the armpit. Early in the morning of February 22, 1989, and while he was working alone, Marvin Hensley received six .38 caliber gunshot wounds-three to the back of his head, one behind his right ear, one to the upper back of the

neck, and one to his right hand. When questioned about the incidents, the appellant denied owning a handgun. However, his former wife, Ora Lee Issacs, testified that he had purchased the handgun, and she identified both the handgun and the holster seized from appellant's trailer as owned by the appellant. The police also found a box of .38 caliber shells when they searched the appellant's home.

On March 17, 1989, the Laurel County grand jury returned a six-count indictment against the appellant. He was charged with murder by shooting Ronald L. Smith with a pistol, first degree burglary by unlawfully entering the Jones Chevron Station and killing Ronald L. Smith, and first degree robbery by shooting and killing Ronald L. Smith in the course of committing a theft at the Jones Chevron Station, committed on or about January 20, 1989. Also, he was charged with murder by shooting Marvin Hensley with a pistol, first degree burglary by unlawfully entering the Hensley Spur Station building and killing Marvin Hensley, first degree robbery by shooting and killing Marvin Hensley with a pistol while in the course of committing a theft at the Hensley Spur Station, committed on or about February 22, 1989. The appellant was tried in September and October 1992 and sentenced in December 1992.

Bowling v. Commonwealth, 942 S.W.2d 293, 297 (Ky. 1997).

Appellant was ultimately sentenced to death on two counts of murder. He was also sentenced to four twenty-year terms of imprisonment on two counts of first-degree robbery and two counts of first-degree burglary, to run consecutively for a total of eighty years. Following the direct appeal, Appellant challenged his convictions and sentence by way of an RCr 11.42 motion filed in the Laurel Circuit Court. This Court, on March 21, 2002, affirmed the circuit court's denial of Appellant's motion. *Bowling v. Commonwealth*, 80 S.W.3d 405

(Ky. 2002).

Appellant subsequently filed a motion for a new trial pursuant to RCr 10.02 and CR 60.02, which was denied by the trial court. This Court affirmed the trial court's denial of that motion in *Bowling v. Commonwealth*, 168 S.W.3d 2 (Ky. 2004). In 2005, Appellant filed another motion for a new trial, which was again rejected by this Court in an unpublished opinion rendered on September 18, 2008. *Bowling v. Commonwealth*, No. 2006-SC-000034-MR, 2008 WL 4291670 (Ky. Sept. 18, 2008). During the pendency of that motion, Appellant filed a *pro se* petition for habeas corpus relief pursuant to KRS Chapter 419 in the Lyon Circuit Court. That court denied Appellant's request for relief and this appeal followed.

“The sole purpose of a habeas corpus proceeding is to determine whether the person detained is entitled to an *immediate* release from detention.” *Hudson v. Commonwealth*, 932 S.W.2d 371, 373 (Ky. 1996) (citing *Graham v. O'Dea*, 876 S.W.2d 621 (Ky.App. 1994)). Habeas corpus petitions must remain “an extraordinary remedy only available under limited circumstances.” *M.M. v. Williams*, 113 S.W.3d 82, 84 (Ky. 2003). If an error is reviewable on direct appeal or by way of an RCr 11.42 motion, habeas corpus relief will not be granted. *Lear v. Commonwealth*, 884 S.W.2d 657, 660 (Ky. 1994). *See also Gray v. Wingo*, 423 S.W.2d 517 (Ky. 1968).

We agree with the Lyon Circuit Court that Appellant is not entitled to habeas relief. In his habeas petition, Appellant has raised forty-nine issues,

which he contends show he is “being held illegal [sic] on Kentucky deathrow [sic] by Warden Tom Simpson in violation of local, state, federal, and international laws.” However, Appellant concedes that at least eleven issues raised in the current petition were also raised in the 2008 appeal before this Court. After reviewing the record, we believe Appellant’s remaining claims have either been previously raised or should have been raised by way of direct appeal or in one of his three post-conviction challenges. Indeed, Appellant’s brief is replete with instances that, in effect, are claims regarding the sufficiency of the evidence. On virtually every page, Appellant argues of “additional exculpatory evidence”; his wrongful conviction; or that, if the case were retried, no “reasonable jury today would find beyond a reasonable doubt Mr. Bowling guilty.” Appellant’s current petition for habeas relief is little more than an attempt to re-litigate past issues.

Appellant offers no compelling justification to this Court that the underlying judgment by which he is being detained is void *ab initio*. *Commonwealth v. Marcum*, 873 S.W.2d 207 (Ky. 1994). Accordingly, we affirm the decision of the Lyon Circuit Court.

Minton, C.J.; Abramson, Cunningham, Noble, Schroder, JJ.; and Special Justices Nancy M. Collins and Frederick A. Higdon, sitting. All concur.

Scott and Venters, JJ., not sitting.

COUNSEL FOR APPELLANT:

Ronnie Lee Bowling #32861
Kentucky State Penitentiary
P. O. Box 5128
Eddyville, KY 42038

COUNSEL FOR APPELLEE:

Jack Conway
Attorney General

William Robert Long, Jr.
Assistant Attorney General
Criminal Appellate Division
Office of the Attorney General
1024 Capital Center Drive
Frankfort, KY 40601-8204