

RENDERED: December 3, 2004; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000195-MR

RONALD HOPKINS

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE LEONARD L. KOPOWSKI, JUDGE
ACTION NOS. 02-CR-00162 & 02-CR-00175

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: GUIDUGLI, TACKETT, AND VANMETER, JUDGES.

VANMETER, JUDGE: Ronald R. Hopkins, pro se, appeals from an order of the Campbell Circuit Court overruling his motion to amend a presentence investigation report (PSI). Hopkins contends that the trial court erred by failing to amend the PSI, that the Commonwealth waived its opportunity to object to Hopkins' version of the underlying events when it failed to reply to his counsel's comments during the sentencing hearing, and that he was afforded ineffective assistance of counsel. We

find no merit to any of Hopkins' contentions and for this reason we affirm the Campbell Circuit Court order overruling his motion.

Hopkins was indicted for possession of a handgun by a convicted felon and for being a second degree persistent felony offender (PFO). On June 19, 2002, the PFO charge was dismissed and Hopkins pled guilty to possession of a handgun by a convicted felon. The court postponed imposition of sentence pending receipt of a PSI. Although the record available to us on appeal does not include a videotape of the August 15 sentencing hearing, Hopkins, in his appellant brief, claims that during that hearing his counsel made the following comments regarding the PSI:

He did want me to put on the record Judge, that they normally take the 'facts and circumstances' of cases from the Police Report and we of course think that some of the things in there are different, there was no shooting, which they put in the 'facts and circumstances' on the Possession of a Handgun case. He did admit to having in his possession a handgun while being a convicted felon, but he didn't shoot at anybody or anything like that, so we wanted to put that on the record...

According to Hopkins, the Commonwealth made no response, and the court then stated "all right." The record does not reflect whether such an exchange occurred.

On August 15, 2002, the court sentenced Hopkins to five years imprisonment. Some fifteen months later Hopkins claimed that he became aware that his PSI had not been amended when, during a parole hearing, he was questioned as to an inaccurate version of the events underlying the handgun possession charge. Hopkins filed a "Motion to Enforce Order to Amend P.S.I." in the Campbell Circuit Court. The court overruled that motion and Hopkins appealed.

Hopkins claims that the lower court erred by overruling his November 2003 motion to amend the PSI. However, the trial court had no authority to grant the requested relief since Hopkins' motion was filed some fifteen months after entry of the final judgment rather than within the ten days as required by CR 59.05. In any event there is no merit to Hopkin's contention that his guilty plea was conditioned on an amended PSI, since his plea was entered long before the PSI was prepared. Moreover, even if we assume for the sake of this appeal that Hopkins has provided us with an accurate account of the sentencing hearing, the courts response "all right" to counsel's comments concerning the events leading to the charge against Hopkins fell far short of constituting the granting of any pending motion.

Next, Hopkins claims both that the Commonwealth waived any objection to his version of the events by failing to make

such an objection during the sentencing hearing and that he was afforded ineffective assistance of counsel. As noted by the Commonwealth, these claims were not raised below and thus are not properly before this court for review. *Caslin v. General Electric Co.*, 608 S.W.2d 69, 70 (Ky. App. 1980).

For the foregoing reasons, this court affirms the order of the Campbell Circuit Court.

ALL CONCUR.

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