

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2004-CA-001104-MR

REGINALD HUGHES

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT  
HONORABLE PATRICIA M. SUMME, JUDGE  
ACTION NO. 04-CR-00030

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: TACKETT AND VANMETER, JUDGES; MILLER, SENIOR JUDGE.<sup>1</sup>

VANMETER, JUDGE: Reginald Hughes appeals from a judgment entered by the Kenton Circuit Court after a jury verdict convicted him of possession of a handgun by a convicted felon. Hughes argues that the statements he made to police should have been suppressed because the officers lacked reasonable suspicion to stop him, that common law exceptions allowed him to have brief

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<sup>1</sup> Senior Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

possession of a firearm, and he that received ineffective assistance of counsel. Finding no error, we affirm.

On August 1, 2003, police officers responded to a report that four black males, dressed in red, were in possession of a rifle and a handgun. The officers testified that upon approaching the location described in the report, they observed two black males, one dressed in red and the other in blue, walking toward and entering a vehicle. The officers blocked the vehicle with their cruiser and the driver, Hughes, exited the vehicle and approached the officers. After Hughes was patted down and was asked whether the vehicle contained any items of concern, Hughes admitted to the officer that his brother's handgun was stowed beneath the driver's seat. The gun was retrieved and Hughes was arrested after one of the officers confirmed that Hughes was a known felon. Hughes was subsequently convicted of possession of a firearm by a convicted felon<sup>2</sup> and, in accordance with the jury's recommendation, he was sentenced to five years imprisonment. This appeal followed.

As Hughes did not raise at trial any of the three issues which he raises on appeal, those issues were not preserved for appellate review.<sup>3</sup> Moreover, Hughes does not argue

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<sup>2</sup> KRS 527.040.

<sup>3</sup> *Hunter v. Commonwealth*, 560 S.W.2d 808, 809 (Ky. 1977).

and we are not persuaded that he is entitled to relief in order to prevent the occurrence of manifest injustice.<sup>4</sup>

We are also not persuaded that, in order to avoid manifest injustice, Hughes must be granted relief based on limited common law exceptions pertaining to the possession or concealment of a handgun. Contrary to Hughes' contention, he does not fit within any of the cited exceptions as, at the time of the stop, his life was not in immediate and grave danger in the sense that injury was about to be inflicted.<sup>5</sup> Further, the issue was not one of whether the handgun was concealed in the vehicle so as to be fully inaccessible to Hughes.<sup>6</sup> In any event, the cited exceptions which pertain to concealment of a weapon were not relevant to the charge against Hughes, as he was convicted of possession of the handgun rather than its concealment.

Finally, Hughes is not entitled to RCr 10.26 relief pertaining to his allegation that he was afforded ineffective assistance of counsel, as such allegation may be raised in a post conviction motion seeking RCr 11.42 relief. As stated in *Humphrey v. Commonwealth*, "claims of ineffective assistance of counsel are best suited to collateral attack proceedings, after

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<sup>4</sup> See RCr 10.26.

<sup>5</sup> *Bailey v. Commonwealth*, 74 Ky (11 Bush) 688, 690 (1876).

<sup>6</sup> *Turley v. Commonwealth*, 307 Ky. 89, 91, 209 S.W.2d 843, 845 (1948).

the direct appeal is over, and in the trial court where a proper record can be made.”<sup>7</sup> While the court in *Humphrey* noted that an ineffective assistance of counsel claim may be eligible for review on direct appeal if the issue has been presented to the trial court and the court has issued a ruling on the issue,<sup>8</sup> Hughes did not choose this course. The issue is therefore not preserved for direct appeal.

For the foregoing reasons, the trial court’s judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Darrell A. Cox  
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BRIEF FOR APPELLEE:

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<sup>7</sup> 962 S.W.2d 870, 872 (Ky. 1998).

<sup>8</sup> *Id.*