

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001355-MR

ROBERT PENDERGRAFT

APPELLANT

v.

APPEAL FROM TAYLOR CIRCUIT COURT
HONORABLE ALLAN RAY BERTRAM, JUDGE
INDICTMENT NO. 00-CR-00146

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, DYCHE, AND TAYLOR, JUDGES.

DYCHE, JUDGE: Robert Pendergraft appeals from an order of the Taylor Circuit Court denying his motion to return certain personal property to him; the property was seized from Pendergraft's car, without a warrant, by the Taylor County Sheriff. We affirm.

Pendergraft was arrested for physically abusing a young child. Following his arrest, the sheriff apparently accompanied an acquaintance of Pendergraft's to his home to retrieve certain items belonging to her. At this time, the

sheriff seized a "lock-out kit" apparently used to gain entry to locked vehicles, which Pendergraft argues was an essential part of his business as a "licensed repo man in the state of Illinois."

Pendergraft pled guilty to five counts of first degree criminal abuse on January 23, 2001, and was sentenced to ten years' incarceration. On June 1, 2004 he filed a motion for return of his property. The motion also sought return of identification documents.

The Commonwealth filed no response. As best we can tell from the record, no hearing was held on the motion, which was denied as to the "lock-out kit" on June 28, 2001.

He now appeals, arguing that he is being deprived of his livelihood. The Commonwealth now responds, arguing that the kit is contraband, the seizure was legal, and that Pendergraft delayed too long before bringing his motion.

Pendergraft requested no findings from the trial court. CR 52.04. "'Prejudice will not be presumed from a silent record.'" Hart v. Commonwealth, 116 S.W.3d 481, 483 (Ky. 2003)(citation omitted). It is incumbent upon Pendergraft to seek further findings. CR 52.04. While we would encourage the trial court to make sufficient findings to support its rulings, we will not vacate or reverse in the absence of such a request.

The order of the Taylor Circuit Court is affirmed.

TAYLOR, JUDGE, CONCURS.

BUCKINGHAM, JUDGE, CONCURS IN RESULT.

APPELLANT *PRO SE*:

Robert Pendergraft
LaGrange, Kentucky

BRIEF FOR APPELLEE:

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