

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-002102-MR

MATTHEW DAVID PENNINGTON

APPELLANT

v. APPEAL FROM BOYD CIRCUIT COURT
HONORABLE C. DAVID HAGERMAN, JUDGE
ACTION NO. 03-CR-00177

COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF CORRECTIONS

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: McANULTY, SCHRODER, AND VANMETER, JUDGES.

McANULTY, JUDGE: Matthew David Pennington (hereinafter appellant) was convicted in a jury trial in the Boyd Circuit Court of manslaughter in the second degree in the death of three-year-old Jordan Hammock. Appellant does not challenge his conviction in this appeal, but argues that the trial court erred in considering multiple victim impact statements unauthorized by KRS 421.500. He alleges that he is entitled to a new sentencing hearing at which only the statutorily mandated victim impact

statements are considered by the judge. We disagree, and affirm his conviction.

Initially, the Commonwealth argues that the issue is not preserved for review. Appellant asserts that the issue is "arguably" preserved by his attorney's motion to strike the victim impact statements at the final sentencing hearing. One of his bases for striking the statements was that the authors of the statements were not the victims, but relatives of the victims unknown to the defense. We regard the claim of error as adequately preserved by the motion to strike.

However, we agree with the Commonwealth that appellant has not identified any error in the proceedings. Our Supreme Court has stated that the existence of KRS 421.500 pertaining to victim impact statement does not preclude consideration by the trial court of statements from friends or family members of the victim. Hoskins v. Maricle, 150 S.W.3d 1, 26 (Ky. 2004), citing Brand v. Commonwealth, 939 S.W.2d 358, 360 (Ky. App. 1997). Nothing prevents the court from considering the testimony of those impacted by the crimes; there is merely no statutory authorization for others to do so besides those identified as victims in the statute. Brand, 939 S.W.2d at 360. Furthermore, the court is permitted to consider more than one victim impact statement. Sherroan v. Commonwealth, 142 S.W.3d 7, 23 (Ky. 2004). The trial court had the discretion to permit the

submission of the additional statements at the sentencing hearing. Thus, appellant has not demonstrated any error.

For the foregoing reasons, the judgment of the Boyd Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Julia K. Pearson
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

Perry T. Ryan
Assistant Attorney General
Frankfort, Kentucky