

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-002423-MR

ROBBIE D. HOUNSHELL

APPELLANT

v. APPEAL FROM LEE CIRCUIT COURT
HONORABLE WILLIAM W. TRUDE, JR., JUDGE
ACTION NO. 94-CR-00007

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, CHIEF JUDGE; JOHNSON, AND McANULTY, JUDGES.

McANULTY, JUDGE: Robbie D. Hounshell (Hounshell) appeals the order of the Lee Circuit Court denying his motion to amend the final judgment brought alternatively under RCr 10.10 for a clerical mistake or RCr 10.26 for a substantial error. Because we conclude there was no error -- either clerical or substantial -- we affirm.

In March of 1994, the Lee County Grand Jury indicted Hounshell for murder, arson in the first degree and robbery in the first degree. The charges followed a January 1994 incident

in which Hounshell shot Kenneth Coomer, robbed him, then burned down his house.

On November 9, 1994, Hounshell entered a guilty plea to all three charges pursuant to a plea agreement with the Commonwealth. The Commonwealth recommended twenty years on each charge, with the sentences for murder and robbery to run consecutively for a total of forty-years' imprisonment. The trial court sentenced Hounshell less than one month later.

Almost eight years after the trial court sentenced Hounshell, he filed a motion for concurrent sentencing, which motion the trial court denied.

A year and a half after the trial court denied Hounshell's motion for concurrent sentencing, he filed the present motion under RCr 10.10 and RCr 10.26 to amend his final judgment to require that all sentences run concurrently. The trial court denied the motion to amend the final judgment on October 20, 2004, stating, "[i]n reviewing the Judgment the Court finds that it may be inartfully drawn, however, the Judgment clearly states that the Defendant's sentence would be forty (40) years." Hounshell appeals that order.

Hounshell argues that the final judgment is clear that Counts 1, 2, and 3 are to run concurrently for a total of twenty (20) years' imprisonment. Specifically, he claims that he was resentenced on Count 3 in violation of the double jeopardy

clause of the Fifth Amendment to the United States Constitution and Section Thirteen of the Kentucky Constitution.

The Commonwealth responds that the language in the plea bargain supports the forty-year sentence. Furthermore, Hounshell acknowledged in his colloquy with the trial court that the Commonwealth was recommending a sentence of forty years. Moreover, the Commonwealth asserts that Hounshell's decision not to appeal the denied motion for concurrent sentencing in 2002 had the effect of making that judgment the law of the case.

Upon review, we find there is no error. Hounshell's argument that he has been subjected to double jeopardy is unfounded. We agree with the trial court that the judgment was "inartfully drawn." Both the plea agreement and the colloquy, however, support a forty-year prison term. The plea agreement reflects the intention of the parties for Hounshell to serve forty years. The colloquy contains Hounshell's acknowledgement that the Commonwealth recommended a total sentence of forty years. In short, we affirm the order of the Lee Circuit Court.

ALL CONCUR.

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