

RENDERED: May 5, 2006; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-001001-MR

PHILLIP OHMER, JR.

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE JULIE REINHARDT WARD, JUDGE
ACTION NO. 04-CR-00225

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM,¹ DYCHE, AND GUIDUGLI, JUDGES.

GUIDUGLI, JUDGE: Phillip Ohmer appeals from an order of the Campbell Circuit Court denying his motion to correct a pre-sentence investigation report. Ohmer argues that the report contains irrelevant and prejudicial information resulting in a loss of rights under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and sections Two and Eleven of the Kentucky Constitution. For the reasons stated below, we affirm the order on appeal.

¹ Judge David C. Buckingham concurred in this opinion prior to his retirement effective May 1, 2006.

On May 24, 2004, Ohmer entered a plea of guilty in Campbell Circuit Court to one count of criminal possession of a forged instrument in the first degree. The plea arose out of an agreement with the Commonwealth, the terms of which dismissed a PFO II charge. On November 24, 2004, the trial court entered a judgment in accordance with the terms of the plea agreement, and sentenced Ohmer to ten years in prison.

On December 28, 2004, Ohmer filed a pro se motion seeking to correct a pre-sentence investigation report. He argued that the court had previously directed the Division of Probation and Parole to correct certain errors contained in the report, and that its failure to do so caused him to suffer harm, including an improper prisoner classification status, housing assignment and ability to attain parole.

On January 19, 2005, the trial court entered an order denying Ohmer's motion. In the same order, the trial court ordered the Division of Probation and Parole to amend the pre-sentence investigation report to reflect Ohmer's contention that he did not fire shots at a police officer. This appeal followed.

Ohmer now argues, pro se, that the pre-sentence investigation report contains irrelevant and prejudicial information resulting in a deprivation of his constitutional rights, and that the trial court abused its discretion in

failing to so rule. He maintains that the Parole Board will rely on the false information contained in the report, and seeks an order reversing and remanding the matter and instructing the trial court to correct the report.

We have closely studied the record, the law and the written arguments, and find no error. Ohmer seeks something from this court that he has already received from the circuit court, to wit, an order that the pre-sentence investigation report reflect his version of the events which led to his indictment. This renders his argument moot.

The circuit court is not required to conform the pre-sentence investigation report to the defendant's version of events. Rather, KRS 532.050(6) merely requires the court to afford the defendant a fair opportunity to rebut the report's findings. KRS 532.050(6) states,

Before imposing sentence, the court shall advise the defendant or his counsel of the factual contents and conclusions of any presentence investigation or psychiatric examinations and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel a copy of the presentence investigation report. It shall not be necessary to disclose the sources of confidential information.

The remedy for failure to follow KRS 532.050 is remand for resentencing.² Ohmer is not seeking resentencing. As he is not seeking the only remedy available for non-compliance with KRS 532.050 (nor does the record show any non-compliance), and because he has already received from the trial court an order requiring the Division of Probation and Parole to reflect his version of events, we find no basis for reversing the order on appeal.

Accordingly, we affirm the order of the Campbell Circuit Court.

ALL CONCUR.

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² Arnold v. Commonwealth, 573 S.W.2d 344 (Ky. 1978).