

RENDERED: SEPTEMBER 28, 2007; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001650-MR

CASSANDRA HILL HOLLAND

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE R. JEFFREY HINES, JUDGE
INDICTMENT NO. 03-CR-00291

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** ** *

BEFORE: LAMBERT, TAYLOR and WINE, JUDGES.

LAMBERT, JUDGE: Casandra Hill Holland appeals the circuit court's determination that her manslaughter and arson convictions are not excepted from the violent-offender statute because her crimes were not motivated or caused by domestic violence. For the reasons stated herein, we affirm the circuit court's determination.

Holland stands convicted of manslaughter and arson for setting her husband on fire while he slept in their residence. The circuit court sentenced Holland to 13 years in prison and ruled that, as a violent offender, she would be ineligible for parole until she

served 85 percent of her prison term. *See* KRS 439.3401. On Holland's first appeal, we remanded, instructing the circuit court to consider whether Holland falls under an exception to the 85-Percent Rule as a victim of domestic violence or abuse. *See* KRS 439.3401(5). We further instructed the circuit court to apply the principles enunciated in *Commonwealth v. Vincent*, 70 S.W.3d 422 (Ky. 2002), in making its determination. On remand, the circuit court found that, because Holland's sole motivation for immolating her husband was jealous rage prompted by her belief that he was having an extramarital affair, she should not be excepted from the 85-Percent Rule.

A person convicted of a violent offense is not subject to the 85-Percent Rule if and only if the offense was related to domestic violence or abuse perpetrated by the victim upon the convicted offender. *See Commonwealth v. Vincent*, 70 S.W.3d 422, 424-25 (Ky. 2002). The burden of persuasion on this issue is on the convicted offender. *Commonwealth v. Anderson*, 934 S.W.2d 276, 278-79 (Ky. 1996). And, the sentencing court's factual findings on this issue shall not be disturbed unless clearly erroneous. *Id.* Finally, we will only reverse for “clear error” when a trial court's determination is “without adequate evidentiary support or is occasioned by an erroneous application of the law.” *Rogers v. Lexington-Fayette Urban County Government*, 175 S.W.3d 569, 571 (Ky. 2005).

The record indicates that, on remand, the circuit court followed all the directives of *Commonwealth v. Vincent*, 70 S.W.3d 422 (Ky. 2002). Indeed, in its written opinion, the circuit court expressly considered (1) whether the victim's alleged, long-past

acts of domestic violence upon Holland was in any way whatsoever related to her crimes; (2) whether Holland's allegations of more recent domestic violence were credible; and (3) whether Holland's belief that her husband was having an extramarital affair was the sole motivation for her crimes. Thus, we hold that the circuit court correctly applied the controlling law.

Also, the circuit court's factual finding that Holland killed her husband solely out of jealous rage is not clearly erroneous. The record contains substantial evidence that Holland set her husband on fire solely due to her belief that he was having an extramarital affair. The evidence in the record shows that Holland stalked and threatened the purported "other woman," even vandalizing her vehicle. Also, a disinterested witness testified that Holland admitted that "[my husband] pissed me off. So, I set his ass on fire." Furthermore, after observing Holland testify first hand, the circuit court found incredible her contention that her crimes were motivated by, or in any way caused by, her husband's purported acts of domestic violence or abuse.

For the foregoing reasons, we affirm the judgment of the McCracken Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Linda Roberts Horsman
Assistant Public Advocate
Department of Public Advocacy
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

James C. Shackelford
Assistant Attorney General
Frankfort, Kentucky