

RENDERED: December 18, 1998; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-001507-MR

OLLIE J. HOLBROOK

APPELLANT

v. APPEAL FROM MAGOFFIN CIRCUIT COURT
HONORABLE JOHN ROBERT MORGAN, JUDGE
ACTION NO. 94-CR-001

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: GUDGEL, CHIEF JUDGE; JOHNSON AND KNOX, JUDGES.

JOHNSON, JUDGE: Ollie J. Holbrook (Holbrook) appeals from the order entered by the Magoffin Circuit Court on June 19, 1997, that denied his pro se motion to alter, amend or vacate his sentence pursuant to Kentucky Rules of Civil Procedure (CR) 60.02 and to vacate his sentence due to ineffective assistance of counsel pursuant to Kentucky Rules of Criminal Procedure (RCr) 11.42. We affirm.

Holbrook was indicted on March 22, 1994, for one count of murder under Kentucky Revised Statutes (KRS) 507.020 for

"committ[ing] murder by operating his vehicle under the influence of alcohol and striking the vehicle operated by Paul Lyon, III and thereby causing the death of Paul Lyons [sic], III." The case went to trial on June 12, 1995, and on the second day of the trial Holbrook pled guilty to one count of manslaughter in the second degree in violation of KRS 507.040. On July 21, 1995, Holbrook was sentenced to serve ten years in prison.

On January 22, 1997, Holbrook filed a pro se motion pursuant to CR 60.02 and RCr 11.42. Holbrook argued in his motion that his guilty plea was involuntary because it was "coerced by a combination of fear, coercive police tactics, and illness"; however, Holbrook failed to allege any facts to support his claim. He also argued that he would not have pled guilty if he had been informed that "intent" was an element of manslaughter in the second degree. Holbrook claimed that the failure of counsel to provide him with this information constituted ineffective assistance of counsel.

A hearing was held on June 2, 1997, and after the Commonwealth read from the transcript of the guilty plea hearing, the trial court denied Holbrook's motions. This pro se appeal followed.

Holbrook argues in his two-page brief that his guilty plea was not voluntary because he was "never told that 'intent' was a critical element of the charged offense, and I never[] intentionally harmed anyone" (emphasis original). KRS 507.040(1) states as follows: "A person is guilty of manslaughter in the

second degree when, including, but not limited to, the operation of a motor vehicle, he wantonly causes the death of another person." Thus, intent to cause harm is not an element of manslaughter in the second degree. There was no error and the claim for ineffective assistance is without merit. We affirm the judgment of the Magoffin Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Ollie J. Holbrook Pro Se
Burgin, KY

BRIEF FOR APPELLEE:

Hon. A. B. Chandler, III
Attorney General

Hon. Joseph R. Johnson
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