

Commonwealth of Kentucky
Court of Appeals

NO. 2005-CA-000861-MR

WALTER BRUNE LONG

APPELLANT

v. APPEAL FROM BOONE CIRCUIT COURT
HONORABLE ANTHONY FROHLICH, JUDGE
ACTION NO. 04-CR-00017

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: GUIDUGLI AND SCHRODER, JUDGES;¹ MILLER,² SPECIAL JUDGE.

MILLER, SPECIAL JUDGE: Walter Long brings this appeal after having entered a conditional guilty plea³ in Boone Circuit Court on March 23, 2005. The issues on appeal concern whether Long was afforded sufficient opportunity to controvert the

¹ Judges Daniel T. Guidugli and Wilfrid A. Schroder concurred in this opinion prior to the expiration of their terms of office on December 31, 2006. Release of the opinion was delayed by administrative handling.

² Retired Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

³ Kentucky Rules of Criminal Procedure (RCr) 8.09.

information contained in his Pre-Sentence Investigation Report⁴ (PSI), and whether trial courts are obligated to make factual findings with respect to disputed portions. For the following reasons, we affirm.

Appellant was charged on October 25, 2003, with Fraudulent Use of a Credit Card over \$100 within a six-month period,⁵ a Class D Felony. He was also charged with being a persistent felony offender (PFO) First Degree.⁶ Long was indicted on January 6, 2004, but the PFO charge was dismissed after he entered a plea agreement on December 22, 2004.

During the sentencing hearing on January 26, 2005, Long informed the circuit court that he had objections to his PSI report. Long asserted that the PSI report inaccurately described his criminal past and also contained irrelevant, prejudicial information. The alleged deficiencies in the PSI report include, *inter alia*, the final dispositions of prior criminal cases in which Long was a defendant.

On March 23, 2005, the circuit court held a hearing during which Long was given the opportunity to controvert the contested elements of his PSI report. Long began his presentation of proof by introducing copies of past cases in

⁴ Kentucky Revised Statutes (KRS) 532.050 and RCr 11.02 require that courts consider a PSI report before sentencing a convicted felon.

⁵ KRS 434.650.

⁶ KRS 532.080.

which he was involved. Next, Long testified on the stand as to the alleged inaccuracies. The Court then noted the discrepancies in the report and sentenced Long to two and one-half years in prison, which was the same sentence negotiated for in his plea agreement with the Commonwealth.

Long, however, was denied his request to cross-examine witnesses who prepared the PSI report. Long also failed in his endeavor to persuade the circuit court that the trial courts must make factual findings with respect to discrepancies in PSI reports. This appeal followed.

Trial courts have broad discretion in determining what constitutes a "meaningful opportunity to controvert" the contents of a PSI report. Fields v. Commonwealth, 123 S.W.3d 914 (Ky.App. 2003) (citing Commonwealth v. Jeffries, 95 S.W.3d 60 (Ky. 2002)).

In the matter at hand, Long was given the opportunity to dispute certain portions of his PSI on March 23, 2005. At the conclusion of this proceeding, Circuit Court Judge Frohlich noted the alleged discrepancies inside the PSI report and initialed his comments. Appellant, however, contends that he should have been afforded the chance to cross-examine the preparers of the report. We disagree.

Neither the U.S. Constitution, nor any Kentucky statute, mandates that convicted felons be given the opportunity

to conduct mini-trials, so to speak, with respect to their PSI reports at sentencing hearings. This Court held in Fields:

The process due at sentencing is less, of course, than that due at the culpability trial, notwithstanding the sentencing court's need for and use of additional information and the significance of its decisions. The due-process clauses of the federal constitution require that sentences not be imposed on the basis of material misinformation, and that facts relied on by the sentencing court "have some minimal indicium of reliability beyond mere allegation." *Specific procedures, however, such as discovery, cross-examination of adverse witnesses, and fact-finding by a jury, as required at trial, "are simply not constitutionally mandated."* (Emphasis added).

Fields, supra, at 917.

Cross-examination of Probation and Parole Officers regarding the PSI report, as suggested by Long, is not required and would be an insufficient use of judicial resources. For example, one of the disputed segments of Long's PSI report pertains to a matter dating back twenty-nine years ago, and resolution of the issue would be impractical in any event.

The trial court acknowledged that it gives more deference to the facts of the specific case at hand rather than a felon's PSI report. Accordingly, it is unlikely that the resolution of the disputed portions of Long's PSI report, even if resolved in his favor, would have altered the outcome of his

sentence.⁷ Indeed, Long was sentenced in full accordance with his plea agreement. Accordingly, we find that Long was given sufficient opportunity to controvert the disputed portions of his PSI.

We next address whether trial courts are tasked with the responsibility to make factual findings with respect to disputed portions of a PSI report. The Commonwealth asserts, *inter alia*, that the plain meaning of KRS 532.050 does not require the trial court to make findings of fact with regard to PSI discrepancies. We agree.

Kentucky law does not mandate that trial courts make specific findings as alleged errors in PSI reports of convicted felons. KRS 532.050(6) provides:

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.

A fundamental rule of statutory interpretation is that courts attempt to ascertain the intent of the General Assembly based on the clear language of the law. Stogner v. Commonwealth, 35

⁷ RCr 9.24 states: "The court at every stage of the proceeding must disregard any error or defect in the proceeding that does not affect the substantial rights of the parties."

S.W.3d 831 (Ky.App. 2000). Unambiguous language of statutes must be given their plain meaning, and we are unable to add or subtract words from the legislative enactment. Id. Judges are required to give "due consideration" to PSI reports and the allegation of errors therein. However, to require judges to go through an entire fact-finding process regarding those errors, particularly when the disputed portions will have little to no effect on the sentence, is unnecessary.

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

ALL CONCUR.

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