

97-CA-0726-MR

DONALD NEWCOMB

APPELLANT

v. APPEAL FROM PULASKI CIRCUIT COURT  
HONORABLE DANIEL J. VENTERS, JUDGE  
INDICTMENT NO. 92-CR-61

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: WILHOIT<sup>1</sup>, Chief Judge; COMBS and JOHNSON, Judges.

WILHOIT, CHIEF JUDGE. The appellant, Donald Ray Newcomb, filed a motion in the Pulaski Circuit Court styled "Petition for Court Order to Correct Presentence Investigation Report." The trial court dismissed the motion without an evidentiary hearing.

The appellant was convicted of first-degree assault and of being a first-degree persistent felony offender. The conviction was affirmed by the Kentucky Supreme Court on May 24, 1994. The trial court subsequently denied an RCr 11.42 motion; this ruling was affirmed by this court's opinion rendered on December 22, 1995. Subsequently, the appellant filed the petition seeking correction of his Presentence Investigation Report (PSI).

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<sup>1</sup> This opinion was prepared and concurred in prior to Chief Judge Wilhoit's retirement on November 15, 1997. Release of the opinion was delayed by normal administrative handling.

As required by KRS 532.050 prior to sentencing, the trial court was furnished a PSI report which contained a list of numerous prior arrests. Of those prior arrests, the appellant complains that the March 9, 1989, and October 23, 1990, flagrant non-support charges are inaccurate. The PSI report shows that the 1989 charge was dismissed and the 1990 charge was amended to non-support. The trial court did not consider these errors in sentencing.

A defendant is afforded a fair opportunity to controvert the factual information contained in a PSI report prior to his sentencing. Commonwealth v. Bush, Ky., 740 S.W.2d 943 (1987), citing KRS 532.050(4). In his petition, the appellant neither denies that he was furnished such an opportunity nor explains why he failed to avail himself of it at the time of sentencing. We find no error in the trial court's dismissal of the petition.

Of course, if an erroneous PSI report is ever used against the appellant in the future, he will be given a new opportunity to controvert it.

The order of the Pulaski Circuit Court denying appellant's motion is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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