

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-002469-MR

ANTHONY WAYNE KING

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE MARY C. NOBLE, JUDGE
INDICTMENT NO. 99-CR-00618

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: BUCKINGHAM, COMBS, AND DYCHE, JUDGES.

DYCHE, JUDGE: Anthony Wayne King was indicted on June 7, 1999, for possession of a firearm by a convicted felon (Kentucky Revised Statute [KRS] 527.040), second-degree persistent felony offender (KRS 532.080), and various misdemeanor charges. The firearm in question was a handgun which, pursuant to KRS 527.040(2), made the charge a class "C" felony. King entered into a plea agreement with the Commonwealth whereby the charge was amended to possession of a firearm by a convicted felon (other than a handgun), a class "D" felony.

King pled guilty to the amended charge on July 9, 1999, and was sentenced to five years' imprisonment, enhanced to seven

and one-half years' imprisonment by his plea of guilty to being a second-degree persistent felony offender. At this hearing, both the Commonwealth and the trial court referred to the amended charge as possession of a firearm. When the sentence was memorialized in writing on July 30, 1999, it stated that the charge of possession of a firearm by a convicted felon had been amended to simply possession of a firearm.

On September 18, 2000, the Commonwealth filed a motion pursuant to Kentucky Rule of Criminal Procedure (RCr) 10.10 to correct the final judgment to reflect that King had been convicted of "possession of a firearm by a convicted felon (amended)." The court granted the motion to amend on September 26, 2000, and this appeal followed.

King argues that the Commonwealth was bound by the verbal agreement and that the trial court had no authority to correct a judicial error more than ten days after the final judgment was entered. These arguments are inapplicable in this case.

An amended judgment may be entered to correct a clerical error under RCr 10.10. Viers v. Commonwealth, Ky., 52 S.W.3d 527, 528 (2001). The distinction between clerical and judicial error "turns on whether the error 'was the deliberate result of judicial reasoning and determination, regardless of whether it was made by the clerk, by counsel, or by the judge.'" Cardwell v. Commonwealth, Ky., 12 S.W.3d 672, 674 (2000) (quoting Buchanan v. West Kentucky Coal Co., 218 Ky. 259, 291 S.W.2d 32 [1927]). In a slightly different context, we have previously

noted that “‘a clerical error is one inadvertently made, while a judicial error is one made advertently in the exercise of judgment or discretion.’” Turner v. Commonwealth, Ky. App., 10 S.W.3d 136, 140 (1999) (quoting People v. McGee, 232 Cal. App. 3d 620, 624, 283 Cal. Rptr. 528, 530 [1991]).

When King entered his plea of guilty, he admitted under oath that he had been in possession of a firearm on the night in question, and that he had previously been convicted of a felony. He also acknowledged, again under oath, that he either had read the petition to enter a plea of guilty or had someone read it to him. The second page of that petition indicates that King was pleading guilty to the amended charge of possession of a firearm **by a convicted felon**, with a recommended sentence of five years' imprisonment. He further acknowledged that the crime to which he was pleading guilty was a class “D” felony, and that he was aware that the Commonwealth would recommend the maximum sentence for that charge.

The amended judgment does not enhance or decrease King's sentence. It merely modifies the judgment to accurately reflect the charge to which King, by his signature and sworn statements, entered a plea of guilty. We can not conclude that the trial court, through deliberate judicial reasoning, accepted a plea of guilty to an offense that is not a statutory crime. The inadvertent reference to “possession of a firearm” was a clerical error, and properly correctable by the trial court.

The judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

APPELLANT *PRO SE*:

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BRIEF FOR APPELLEE:

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