

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-002134-MR

ANTHONY W. MATTINGLY

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JUDITH MCDONALD BURKMAN, JUDGE
ACTION NOS. 00-CR-0470, 00-CR-0862, 00-CR-1798
01-CR-0299, 99-CR-2163

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AND ORDER DISMISSING
** **

BEFORE: BARBER, HUDDLESTON, MILLER, JUDGES.

BARBER, JUDGE: Anthony W. Mattingly appeals from an order of the Jefferson Circuit Court denying his motion to have a different probation and parole officer assigned to his case in conjunction with a court-ordered review of his presentence investigation report. Having concluded that the order appealed from is a nonfinal interlocutory order, we dismiss the appeal.

On June 5, 2001, Mattingly pled guilty to the following charges: (1) Case no, 99-CR-2163 - theft by unlawful taking over \$300.00 and first-degree persistent felony offender; (2) Case No. 00-CR-0470 - flagrant non-support; (3) Case No. 01-CR-0299 - first-degree persistent felony offender; (4) Case No. 00-CR-0862 - theft by deception over \$300.00 (four counts) and first-degree

persistent felony offender; and (5) Case No. 00-CR-1798 - theft by deception over \$300.00 (six counts).

Pursuant to the plea agreement, the Commonwealth recommended sentencing resulting in a total of 12 years to serve. Entry of the judgment imposing sentence was postponed and suspended pending a presentence investigation. On July 27, 2001, following the presentence investigation and the filing of the report, the trial court imposed final judgment and sentencing consistent with the plea agreement.

On September 10, 2001, Mattingly filed a motion requesting that the trial court issue an order requiring the Kentucky Department of Corrections, Division of Probation and Parole, to allow him to review his presentence report and correct any errors and incorrect information contained in the report. Mattingly alleged that his presentence report contained errors concerning his juvenile criminal record and the disposition of a domestic violence order, and that the incorrect information would be detrimental to his parole eligibility. The motion also requested that the Department of Corrections be ordered to assign a different probation and parole officer to make the corrections other than the one who prepared the original report.

On September 17, 2001, the trial court entered an order granting Mattingly's motion to review his presentence investigation report. Pursuant to the order Mattingly was permitted to submit a list of errors and incorrect information to the Department of Corrections, the Department was to review the list and make corrections as necessary, and the corrected report

was to be filed with the trial court. However, the order denied Mattingly's motion to have a person other than the original preparer of the presentence report review his list of errors and incorrect information. This appeal followed.

The Commonwealth contends that Mattingly's appeal should be dismissed as interlocutory. We agree.

The trial court's September 17, 2001, order stated, in relevant part, as follows:

IT IS HEREBY ORDERED that the Kentucky Department of Corrections allow the Defendant to review his Presentence Investigation Report and submit a list of what he claims to be errors and incorrect information. The Department of Corrections shall then review the Presentence Investigation Report for any incorrect information or errors, correct same and forward same to the Court. The Defendant's request that a person other than the original preparer of the Presentence Investigation Report conduct the review is DENIED.

KRS 22A.020(1) vests this Court with jurisdiction over final judgments, orders and decrees. Kentucky Rules of Civil Procedure (CR) 54.01 defines a final or appealable judgment as one "adjudicating all the rights of all the parties in an action or proceeding, or a judgment made final under Rule 54.02." Depending upon the outcome of the Department of Correction's review of Mattingly's proposed changes to the presentence report, additional issues may remain to be adjudicated regarding the presentence report dispute.

Pursuant to the order, it remains for Mattingly to prepare his list of errors and submit them to the Department of Corrections for review. The Department of Corrections then must

review the presentence report for information and errors, make corrections, and submit the corrected report to the trial court. It may be that the Department of Corrections will agree with Mattingly's proposed corrections, in which case there will be no further need for adjudication. However, if the Department of Corrections disagrees with Mattingly's proposed corrections, the trial court may then be required to adjudicate the disagreement over the proposed corrections. Because there may be disagreements regarding the errors and corrections that will yet need to be resolved, it is apparent that the trial court's September 17, 2001, order was an intermediate step which does not adjudicate all the rights of all the parties in the action.

Further, since there is no language of finality in the trial court's order as required by CR 54.02, the process of CR 54.02 cannot be invoked. Hale v. Deaton, Ky., 528 S.W.2d 719 (1975). Therefore, the trial court's September 17, 2001, order is not a final order within the meaning of either CR 54.01 or 54.02.

Accordingly, the appeal is dismissed and the matter is remanded to the Jefferson Court for further proceedings.

ALL CONCUR

/s/ David A. Barber
JUDGE, COURT OF APPEALS

ENTERED: September 13, 2002

BRIEF FOR APPELLANT:

Anthony W. Mattingly, pro se
Northpoint Training Center
Burgin, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler III
Attorney General of Kentucky

George G. Seelig
Assistant Attorney General
Frankfort, Kentucky