

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-002634-MR

ERIC STRATTON

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE GEOFFREY P. MORRIS, JUDGE
ACTION NO. 99-CR-000470

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: EMBERTON, Chief Judge, BUCKINGHAM, and GUDGEL, Judges.

BUCKINGHAM, JUDGE: Eric Stratton appeals from an order of the Jefferson Circuit Court dismissing his petition for declaratory judgment. We affirm.

On February 18, 1999, Stratton was indicted by a Jefferson County grand jury on charges of first-degree rape, second-degree rape, second-degree sodomy, and first-degree sexual abuse. Pursuant to a plea agreement, Stratton entered an Alford plea of guilty to the first-degree sexual abuse charge, and the remaining charges were dismissed. On October 21, 1999, he was sentenced to three years in prison for the offense. According to

the judgment, Stratton voluntarily waived the pre-sentence investigation (PSI) report.

The PSI report was apparently completed by corrections officials on November 17, 1999. Some time later, Stratton requested notification of the factual contents and conclusions in the report. See Commonwealth v. Bush, Ky., 740 S.W.2d 943 (1987). This information was supplied to Stratton on January 12, 2001. Based on information in the report, Stratton immediately submitted a request that the report be amended.

On March 20, 2001, Stratton's attorney moved the trial court to allow amendments to the PSI report. On that same day, the court entered an order allowing an amended report. Corrections officials submitted an amended report to the trial court on May 22, 2001.

Stratton had two complaints with the original PSI report. First, the report stated that the crimes were committed between July 1, 1990, and June 30, 1994. Stratton asserted that he was in prison on a parole violation between July 1, 1990, and August 8, 1991, and that, therefore, he could not have committed the offenses during the early part of the time referenced in the report. Second, the report stated that Stratton had vaginal intercourse and oral sex with the victim.¹ Stratton asserted that he pled guilty to first-degree sexual abuse and that the charges relating to intercourse and oral sex had been dismissed and were untrue. Thus, he asserted that the report should have been amended to delete these references.

¹ The victim of the crime was Stratton's daughter.

The amended PSI report, which was submitted to the trial court on May 22, 2001, included Stratton's statements concerning both points of contention. However, the information contained in the original report that Stratton found objectionable was not deleted in the amended report as desired by Stratton. Stratton claimed that the amended report did not properly address the problems, and he filed a petition for writ of mandamus in which he moved the trial court to compel corrections officials to comply with the court's prior order as it pertained to the amending of the report. The petition was filed on June 15, 2001, and was dismissed by the trial court on July 27, 2001.

Stratton subsequently filed a petition for declaratory judgment with the trial court, asserting the same grounds as set forth in the petition for writ of mandamus. On October 26, 2001, the trial court entered an order dismissing the petition. This appeal by Stratton followed.

Stratton argues on appeal that the trial court abused its discretion in denying his petition for declaratory judgment. He maintains that the relief he had requested had already been granted by the trial court's entry of the previous order allowing the amendment of the PSI report. He asserts that the manner in which the amendments were addressed "in essence made it a nullity as the problems remained and continued to effect appellant's classification and participation in the Sex Offender Treatment Program."

More specifically, he contends that he is now placed in a position of having to admit the facts as they were presented in the PSI report even though those facts are untrue.² In support of his argument that the facts are untrue, he notes that the rape and sodomy charges were dismissed and that he pled guilty only to the first-degree sexual abuse charge. He asserts that these matters are highly prejudicial to his prisoner classification and to the treatment plans and that they will also have "serious ramifications when appellant goes before the Parole Board."

The statutory provisions governing PSI reports are set forth in KRS³ 532.050. Unfortunately, the statute does not address the issue before this court. Rather, the statute provides in pertinent part that "[t]he report . . . shall include an analysis of the defendant's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, personal habits, and any other matters that the court directs to be included." KRS 532.050(2). Further, Stratton has cited no authority which would indicate that the manner in which the report was submitted was improper.

In response to Stratton's arguments, the Commonwealth cites Aaron v. Commonwealth, Ky. App., 810 S.W.2d 60 (1991). Therein, the appellant sought to have information relating to dismissed charges segregated from the PSI report. His argument

² Before Stratton may be paroled, he must complete a sexual offender treatment program. In order to complete the program, he must admit that he committed the offenses.

³ Kentucky Revised Statutes.

was rejected by the trial court, and this court affirmed the trial court's ruling on the issue. Id. at 62.

We reject Stratton's arguments for two reasons. First, we conclude that the Aaron case is authority for including information concerning a dismissed charge in the PSI report. Second, we believe the victim's version of a crime properly belongs in the PSI report even though the charges may be amended or some charges may be dismissed. Merely because the original charges were subjected to the plea bargaining process and that some charges were amended or even dismissed does not necessarily mean that the crime was committed only in the manner in which a defendant pleads guilty.⁴ In short, we conclude that the amended PSI report was not improper and that the trial court did not err in denying Stratton's petition for declaratory judgment.

The order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Eric Stratton, *Pro Se*
LaGrange, Kentucky

BRIEF FOR APPELLEE:

M. Lee Turpin
Frankfort, Kentucky

⁴ Plea bargaining may occur in sex offenses cases, as well as in other types of cases, for a variety of reasons, including a desire by the Commonwealth that the victim not be made to testify and put through the ordeal of a trial. Because the victim was Stratton's minor daughter, that may have been the case herein.