

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2002-CA-000846-MR

WILLIAM WADDELL

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE DENISE CLAYTON, JUDGE  
ACTION NO. 94-CR-002715

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING IN PART,  
REVERSING IN PART AND REMANDING

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BEFORE: JOHNSON, SCHRODER AND TACKETT, JUDGES.

JOHNSON, JUDGE: William Waddell has appealed, pro se, from an order of the Jefferson Circuit Court entered on March 14, 2002, which denied his RCr<sup>1</sup> 10.10 motion to correct and amend a final judgment and sentence. Having concluded that the trial court did not err by denying Waddell's motion to run his sentences concurrently, we affirm in part. However, the Commonwealth having no objection to the final judgment being amended to

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<sup>1</sup> Kentucky Rules of Criminal Procedure.

reflect the fact that Waddell was convicted of "wanton murder," we reverse in part.

On November 11, 1994, Waddell was indicted by a Jefferson County grand jury on one count of murder<sup>2</sup> and one count of wanton endangerment in the first degree.<sup>3</sup> The indictment charged that on or around October 7, 1994, Waddell was driving at a high rate of speed while intoxicated, when his vehicle collided with a car driven by Barry Brown. Brown died as a result of the injuries he suffered in the collision and his passenger, Mike Rollins, suffered back and neck injuries.

A jury trial was held on November 17, 1995, and Waddell was found guilty of both charges. The jury recommended sentences of 20 years' imprisonment on the conviction for murder and five years' imprisonment on the conviction for wanton endangerment in the first degree. The jury also recommended that Waddell's sentences be served consecutively, resulting in a total recommended sentence of 25 years' imprisonment. On December 21, 1995, after a pre-sentence investigation had been completed, the trial court followed the jury's recommendation and sentenced Waddell to 25 years' imprisonment.

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<sup>2</sup> Kentucky Revised Statutes (KRS) 507.020.

<sup>3</sup> KRS 508.060.

On November 21, 1996, the Supreme Court of Kentucky affirmed Waddell's conviction.<sup>4</sup> On May 11, 1998, Waddell filed a pro se RCr 11.42 motion to vacate his sentence, arguing that at trial he had received ineffective assistance of counsel. The trial court denied Waddell's motion on July 23, 1998. This Court affirmed the trial court's denial on July 30, 1999.<sup>5</sup>

On March 5, 2002, Waddell filed a pro se RCr 10.10 motion to correct and amend his final judgment and sentence to reflect the fact that he was convicted of "wanton murder." Waddell also claimed the final judgment and sentence should be amended to run his two sentences concurrently rather than consecutively.<sup>6</sup> On March 14, 2002, the trial court denied Waddell's motion. This appeal followed.

Waddell claims that a "sentencing error" occurred when the trial court ordered his sentences to run consecutively, without giving him the opportunity to have a "meaningful hearing." Waddell asks either that his sentences be ordered to run concurrently or that he be given a hearing "to present evidence in favor of having the sentences run concurrently." We first note that this alleged "sentencing error" is not a

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<sup>4</sup> 1996-SC-000008, non-published.

<sup>5</sup> 1998-CA-001972, non-published.

<sup>6</sup> The Commonwealth did not file a response to Waddell's RCr 10.10 motion before the trial court.

"clerical error" that can be corrected under RCr 10.10.<sup>7</sup>

Nevertheless, the record shows that prior to Waddell's final sentencing, he was given an opportunity to present evidence in support of his request to have his sentences run concurrently. Indeed, counsel for Waddell expressly asked the trial court to order the sentences to run concurrently. Accordingly, Waddell's claim of error on this issue is wholly without merit.

Waddell also argues that his final judgment and sentence should be amended to reflect the fact that he was convicted of "wanton murder."<sup>8</sup> Waddell correctly points out that the trial court's final judgment and sentence states that he was convicted of "murder" and that the judgment does not contain the words "wanton murder." Hence, Waddell claims that his final judgment and sentence should be amended by inserting the word "wanton" to reflect the fact that he was convicted of "wanton murder." In its brief to this Court, the Commonwealth states that "any correction is unnecessary" but if this Court "finds it necessary to amend the judgment[,] it "has no objection." Accordingly, in the interest of providing an accurate record, we reverse the trial court's order denying Waddell's motion to have his final judgment amended and remand this matter with

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<sup>7</sup> See Cardwell v. Commonwealth, Ky., 12 S.W.3d 672, 674 (2000)(stating that "[a] clerical error involves an error or mistake made by a clerk or other judicial or ministerial officer in writing or keeping records. . .")(quoting 46 Am.Jur.2d Judgments § 167).

<sup>8</sup> See KRS 507.020(1)(b).

instructions to amend Waddell's final judgment to reflect the fact that he was convicted of "wanton murder."<sup>9</sup>

Based on the foregoing, the order of the Jefferson Circuit Court is affirmed in part and reversed in part, and this matter is remanded with instructions to amend Waddell's final judgment to reflect the fact that he was convicted of "wanton murder."

ALL CONCUR.

BRIEF FOR APPELLANT:

William Waddell, Pro Se  
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler III  
Attorney General

Courtney J. Hightower  
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<sup>9</sup> This change will have no practical effect on Waddell's conviction or sentences. As it is defined under KRS 507.020, the crime of "murder" includes both intentional murder, defined in KRS 507.020(1)(a), and wanton murder, defined under KRS 507.020(1)(b).