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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000006-MR

DEMETRIUS COMPTON — APPELLANT

v.

APPEAL FROM HENDERSON CIRCUIT COURT
HONORABLE KAREN LYNN WILSON, JUDGE
ACTION NO. 12-CR-00091

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: D. LAMBERT, MAZE AND THOMPSON, JUDGES.

THOMPSON, JUDGE: Demetrius Compton appeals from a Henderson Circuit Court judgment sentencing him to serve eleven years for first-degree manslaughter. Compton argues that the trial court erred (1) in finding that he was not a victim of domestic violence and, therefore, subject to the 85% parole eligibility rule for violent offenders, and (2) in imposing court costs. We affirm.

Compton was initially charged with murder and being a first-degree persistent felony offender after he strangled Brystal Chambers, his live-in girlfriend and mother of his son.

Compton entered an *Alford* plea to first-degree manslaughter pursuant to a plea offer from the Commonwealth.[1] Under the express terms of the offer, the Commonwealth agreed to recommend a sentence of eleven years and, specified that because the conviction was for a violent offense, the sentence would be subject to 85% parole eligibility pursuant to Kentucky Revised Statutes (KRS) 439.3401.

On the day of sentencing, Compton filed a *pro se* motion claiming he was a victim of domestic violence and, therefore, exempt from the 85% parole eligibility rule. After a hearing, the trial court denied the motion, finding that Compton was not a victim of domestic violence and there was no connection between domestic violence and the offense for which he was convicted. The trial court sentenced Compton in accordance with the terms of the plea agreement, which included court costs in the amount of $155. This appeal by Compton followed.

KRS 439.3401(3)(a) provides that a violent offender shall not be released on parole until he has served 85% of the sentence imposed. A violent

[1] *See North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970). An *Alford* plea "permits a conviction without requiring an admission of guilt and while permitting a protestation of innocence." *Wilfong v. Commonwealth*, 175 S.W.3d 84, 103 (Ky.App. 2004) (quoting *State ex rel Warren v. Schwarz*, 211 Wis.2d 710, 566 N.W.2d 173, 177 (Wis App. 1997)).

offender is defined to include "any person who has been convicted of or pled guilty to the commission of . . . [a] Class B felony involving the death of the victim or serious physical injury to a victim[.]" KRS 439.3401(1)(c). First-degree manslaughter is a Class B felony involving the death of the victim. *See* KRS 507.030(2).

The 85% rule does not, however, "apply to a person who has been determined by a court to have been a victim of domestic violence or abuse pursuant to KRS 533.060 with regard to the offenses involving the death of the victim or serious physical injury to the victim." KRS 439.3401(5). The Kentucky Supreme Court has interpreted the phrase "with regard to the offenses involving the death of the victim or serious physical injury to the victim" to mean that there must "be some connection or relationship between the domestic violence suffered by the defendant and the underlying offense committed by the defendant." *Commonwealth v. Vincent*, 70 S.W.3d 422, 424 (Ky. 2002). Thus, "[p]roof of history of domestic violence between the defendant and the victim is not, by itself, sufficient to trigger the statute's parole exemption." *Id*.

In order to qualify for the exemption under KRS 439.3401(5), Compton was required to show by a preponderance of the evidence that he was a victim of domestic violence. *Commonwealth v. Anderson*, 934 S.W.2d 276, 278 (Ky. 1996). This standard "merely requires that the evidence believed by the fact-finder be sufficient that the defendant was more likely than not to have been a victim of domestic violence." *Id*. We review the trial court's findings under a

"clearly erroneous" standard. *Id*. at 279. "A factual finding is not clearly erroneous if it is supported by substantial evidence." *Hunter v. Hunter*, 127 S.W.3d 656, 659 (Ky.App. 2003).

At the hearing on his motion, Compton testified he met Brystal Chambers six or seven years earlier, and they had a son together who was five years of age. He stated there were times that Chambers was aggressive and had physically assaulted him. He provided documentation of two different incidents which he claimed showed that he was a victim of domestic violence at her hands.

The first occurred in Evansville, Indiana, in 2008. Compton testified that he "had to take out a restraining order and file police reports on [Chambers]." He introduced certified records showing that he had petitioned for a protective order and requested a hearing, naming Chambers as the respondent. The document indicates that Compton failed to appear at the scheduled hearing, however, and the temporary *ex parte* order was dissolved and the case dismissed.

The second incident occurred in Evansville in February 2009, when, according to Compton, Chambers came to his house, kicked in the front door and assaulted him and his guests. He testified that his guests filed burglary and battery charges against her. He submitted into evidence an Evansville Police incident report, which listed Veronica M. Jones as the victim of an unnamed assailant who used hands, fists and feet. Although his brief states that Compton was also listed as a victim on the report, he is actually only named as a witness. Compton testified

that because he and Chambers were "in a relationship," he did not pursue the matter and believed the charges were dropped.

We agree with the trial court's finding that Compton was not a victim of domestic violence. Compton simply failed to produce sufficient evidence to meet the preponderance of the evidence standard. In the first incident, which occurred three years before he strangled Chambers, Compton obtained an *ex parte* emergency order against her but failed to follow through, not even appearing in court. In the second incident, there is no evidence beyond Compton's own testimony that Chambers committed the alleged attack, or that Compton was a victim.

Furthermore, he failed to show any connection, as required under *Vincent*, between these two incidents and the offense for which he was convicted, beyond vague allegations that Chambers's acts against him constituted "a history that had to have been on his mind when he approached her on the day she died," and that he would have been in fear of imminent physical violence at her hands. It is the province of the court to assess the credibility of the witnesses. *See Neal v. Commonwealth*, 449 S.W.3d 370, 376 (Ky.App. 2014). The trial court's determination that there was simply insufficient evidence to support Compton's claim that he was a victim of domestic violence was not clearly erroneous.

Compton urges us to adopt the reasoning of Justice Keller's dissent in *Vincent*. *Vincent*, 70 S.W.3d at 426-33 (Keller, J. dissenting). He argues that under that standard, he would automatically be considered a victim of domestic

violence based on Chambers's history of violence against him. But in *Vincent*, there was absolutely no question that the defendant was a victim of domestic abuse at the hands of her former husband. "Vincent presented sufficient evidence to support a finding that she had been a victim of domestic abuse and that Hitchcock [her former husband] was the victimizer." *Id*. at 423. Justice Keller's dissent proceeded on that assumption, and questioned the necessity of finding a contemporaneous connection between the undisputed domestic violence and the offense committed by the defendant.

In Compton's case, there was insufficient evidence to support a finding that he was a victim of domestic abuse. Even if the dissent was applicable to the facts of this case, "[a]s an intermediate appellate court, this Court is bound by published decisions of the Kentucky Supreme Court. Rules of the Supreme Court (SCR) 1.030(8)(a). The Court of Appeals cannot overrule the established precedent set by the Supreme Court or its predecessor Court." *Smith v. Vilvarajah*, 57 S.W.3d 839, 841 (Ky.App. 2000).

Compton further argues the trial court erred in imposing court costs in the amount of $155 in accordance with the express terms of the plea agreement. At the sentencing hearing on November 12, 2013, Compton argued the costs should be waived, citing the length of time he would be in prison. The trial court stated that it would set a hearing for February 9, 2015, to review the court costs and, if Compton was still incarcerated at that time, the issue would be reviewed closer to his release date.

KRS 23A.205 provides for the mandatory payment of court costs by persons convicted of a crime in circuit court, "unless the court finds that the defendant is a poor person as defined by KRS 453.190(2) and that he or she is unable to pay court costs and will be unable to pay the court costs in the foreseeable future." KRS 23A.205(2). The *in forma pauperis* statute, defines a "poor person" as one "who is unable to pay the costs and fees of the proceeding in which he is involved without depriving himself or his dependents of the necessities of life, including food, shelter, or clothing." KRS 453.190(2).

Compton contends that he qualifies as a "poor person" for the following reasons: he was unemployed in 2008 and 2009, and during the three months prior to his arrest; he claims to have no assets; he has two children; he was declared indigent and assigned a public defender to represent him at trial; and on November 25, 2013, the trial court entered an order allowing him to proceed *in forma pauperis* on appeal under KRS 453.190 and KRS 31.110(2)(b). Because Compton did not raise these arguments before the trial court, we review for palpable error. *Wiley v. Commonwealth*, 348 S.W.3d 570, 574 (Ky. 2010).

Compton consented to the payment of costs as part of his plea agreement, thereby indicating to the trial court that he was able to pay. "Courts have recognized that accepted plea bargains are binding contracts between the government and defendants." *Elmore v. Commonwealth*, 236 S.W.3d 623, 626 (Ky.App. 2007) (quoting *Hensley v. Commonwealth*, 217 S.W.3d 885, 887 (Ky.App. 2007)).

Although the trial court found Compton to be a poor person for purposes of proceeding *in forma pauperis* on appeal, it further found that he would be able to pay court costs in the future and scheduled a hearing to determine his financial status at the time of his release. The trial court acted fully in accordance with the terms of the plea agreement and the pertinent statutes in imposing the court costs.

The Henderson Circuit Court judgment is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Susan Jackson Balliet
Assistant Public Defender
Dept. of Public Advocacy
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

Tami Allen Stetler
Assistant Attorney General
Frankfort, Kentucky