

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-000134-MR

MICHAEL WAYNE CROWE

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JAMES D. ISHMAEL, JR., JUDGE
ACTION NO. 14-CR-00768

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
VACATING AND REMANDING

** ** * * * * *

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

LAMBERT, D., JUDGE: Michael Wayne Crowe appeals from the Fayette Circuit Court's January 26, 2016 judgment sentencing him to 15 years in prison. Crowe agreed to the sentence as part of a plea agreement, wherein he admitted killing his wife. The circuit court imposed the sentence notwithstanding evidence Crowe was a victim of domestic abuse. After review, we vacate the judgment and remand for further proceedings.

I. BACKGROUND

In May 2014, Crowe smothered his wife to death with a pillow from their motel room. He pled guilty to first-degree manslaughter, a Class B felony. After entering his guilty plea, Crowe moved the circuit court for a determination as to his parole eligibility in light of KRS¹ 439.3401, which addresses parole eligibility for violent offenders. Crowe argued that he should not have to serve at least eighty-five percent of the sentence imposed as required by KRS 439.3401(3). He instead claimed that he was a victim of domestic violence or abuse with regard to his crime and thus exempt from serving the required eighty-five percent. Crowe relied on KRS 439.3401(5) to support this claim. The circuit court held a hearing.

During the hearing, four witnesses testified that they were aware of possible domestic violence committed against Crowe by his wife. An investigating detective also testified that Crowe displayed visible signs of physical abuse at the time of his arrest. In particular, the detective confirmed photographic evidence that Crowe received a significant bite wound to his chest on the night he killed his wife.

Despite this evidence, the circuit court denied Crowe's motion without explaining in its written order why the domestic-violence exemption in KRS 439.3401(5) did not apply. This appeal followed.

II. STANDARD OF REVIEW

¹ Kentucky Revised Statutes

A trial court speaks only through written orders entered upon the official record; any factual findings or legal conclusions made orally by the trial court must be specifically incorporated into the record. *Kindred Nursing Centers Ltd. Partnership v. Sloan*, 329 S.W.3d 347, 349 (Ky. App. 2010).

III. DISCUSSION

On appeal, Crowe argues the circuit court failed to sufficiently find whether he was more likely than not to have been a domestic violence victim as required by *Commonwealth v. Anderson*, 934 S.W.2d 276 (Ky. 1996). Crowe further argues this was error. We agree.

Here, although the record indicates the circuit court made several oral findings at the hearing as to whether Crowe was abused by his wife, the circuit court's final written order does not contain any such findings. In fact, the written order only assesses Crowe's relative danger to society before concluding that he is not eligible for probation. This is certainly an appropriate consideration when weighing the overall evidence of the case; however, it does not lend itself to meaningful appellate review on the issue at hand, *i.e.*, whether Crowe is exempt from the requirement of KRS 439.3401(3). Accordingly, the Fayette Circuit Court's order is vacated. We remand with instructions to make specific findings as to the validity of Crowe's domestic violence claim, particularly after analyzing the exemption provided in KRS 439.3401(5), and include them in the final written judgment.

ALL CONCUR.

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