

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-001751-MR
AND
NO. 2001-CA-001752-MR

MONDRE A. SAUNDERS

APPELLANT

v. APPEAL FROM FLEMING CIRCUIT COURT
HONORABLE ROBERT I. GALLENSTEIN, JUDGE
ACTION NOS. 00-CR-00024 & 00-CR-00034

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: DYCHE and McANULTY, Judges; and JOHN WOODS POTTER,
Special Judge.¹

McANULTY, JUDGE: Mondre Saunders (hereinafter appellant) appeals
the Fleming Circuit Court's denial of his motion to withdraw his
guilty plea. We affirm.

Appellant was indicted on a charge of wanton
endangerment alleged to have occurred on July 29, 2000,
(Indictment number 00-CR-24). Appellant was soon thereafter

¹Senior Status Judge John Woods Potter sitting as Special
Judge by assignment of the Chief Justice pursuant to Section
110(5)(b) of the Kentucky Constitution.

indicted for murder, assault in the first degree, and wanton endangerment in the first degree, all of which were alleged to have occurred on September 2, 2000, (Indictment number 00-CR-34).

The Commonwealth offered to amend Indictment 00-CR-34 to a single count of manslaughter in the second degree, dismissing the assault and wanton endangerment charges, and on a plea of guilty to recommend a ten year sentence to be run concurrently with the sentence received on Indictment 00-CR-24. Appellant plead guilty to the amended charges. However, prior to sentencing, appellant moved to withdraw his guilty pleas for the reason that they were not knowingly and intelligently entered.

The trial court held a hearing on the motion. At the hearing, appellant argued that he had not admitted guilt on the charges. The trial court overruled the motion to withdraw, and found that appellant ~~A~~knowingly, voluntarily and freely entered his plea of guilty and that he was aware of the nature of the proceeding and the consequences of a guilty plea.@ Appellant appeals the judgments of conviction.

On appeal, appellant contends that the trial court erred in denying the motion to dismiss because his guilty plea was involuntary. The incident surrounding Indictment 00-CR-34, involved appellant and another man firing shots into a vehicle being driven by Ronald Blankumsee, and containing a passenger, Kenneth Blankumsee. Ronald Blankumsee was killed and Kenneth Blankumsee was shot in the shoulder. A bullet and metal jacket removed from the skull of Ronald could not be identified or

eliminated as coming from the gun of appellant. Appellant argues that there is no factual basis for the plea of guilty to the manslaughter charge because there is no proof that a bullet from his weapon actually killed the victim. Appellant further suggests that the plea was invalid because the Commonwealth could not establish causation. Moreover, appellant asserts that he has never acknowledged guilt.

The Commonwealth responds that a sufficient factual basis was established in the guilty plea colloquy in which appellant stated the facts surrounding his plea in the case C that he fired a weapon that discharged a bullet that traveled in the direction of the victim who died shortly afterward. The Commonwealth asserts that the plea colloquy demonstrates that appellant was aware of what was taking place when he entered his plea, and fully aware of the facts surrounding the case, including the fact that another person fired a gun. The Commonwealth argues that appellant simply felt apprehension after entering the guilty plea and decided that he wanted the Commonwealth to prove its case.

RCr 8.10 states that A[a]t any time before judgment the court may permit the plea of guilty or guilty but mentally ill, to be withdrawn and a plea of not guilty substituted.@ There is no mechanism by which a voluntary plea of guilty may be withdrawn as a matter of right; it is only within the discretion of the trial court to allow it to be withdrawn. The issue is whether the court abused its discretion in this instance.

We believe the only basis for finding an abuse of discretion is if it is shown that the plea was not entered knowingly and voluntarily. In Maxwell v. Commonwealth, Ky., 602 S.W.2d 169 (1980), the Kentucky Supreme Court found that it was an abuse of the trial court's discretion to deny the defendant's motion to withdraw his guilty plea. In that case, the defendant proceeded without an attorney in entering his plea, was confused about the need for an attorney, the seriousness of the charges and possible penalties, and seemed more concerned about his need to fulfill his employment obligations on the day of the arraignment. Id. at 169. In Allen v. Walter, Ky., 534 S.W.2d 453, 455 (1976), the Supreme Court held that a plea entered with the understanding that the charge would be reduced, and which could not be so reduced, was not a voluntary plea in a constitutional sense. The Court found that the defendant did not waive his right to trial by jury and the trial court's order could be reversed on appeal.

From this precedent, we believe that it is only an abuse of the trial court's discretion to refuse to permit a guilty plea to be withdrawn if the plea was not voluntary. The trial court examined the plea in this case and found that it was given knowingly, voluntarily and freely. We have reviewed the plea colloquy in this case and we agree. Appellant was represented by counsel. He was sufficiently informed of the consequences of accepting the offer of the Commonwealth and pleading guilty. Moreover, he was aware of the facts of his

case, including the fact that he was not the only person to fire a weapon at the vehicle. We do not agree that appellant lacked understanding of the significance of pleading guilty under the facts of the case. We find no basis for determining that the plea was not knowing and voluntary.

Under North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970), a court may accept a guilty plea despite the defendant's protestations of innocence if the court is satisfied that the defendant chooses to plead because it is in his interests, and there is testimony disclosing a sufficient factual basis to demonstrate actual guilt. We believe that a sufficient factual basis for the plea was established by the trial court's colloquy. See Henderson v. Morgan, 426 U.S. 637, 96 S. Ct. 2253, 49 L. Ed. 2d 108 (1976). Appellant admitted at the plea colloquy that he had fired in the direction of the victim. This provided a sufficient factual basis to support a conviction for manslaughter in the second degree. Furthermore, while not admitting guilt, appellant acknowledged the evidence against him and that pleading guilty was in his interest. This is sufficient to enter a plea of guilty in this Commonwealth. Commonwealth v. Corey, Ky., 826 S.W.2d 319, (1992); North Carolina v. Alford, 400 U.S. 25, 31, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

From all of the foregoing, we find the court did not abuse its discretion in refusing to permit withdrawal of the plea. We affirm the judgments of the Fleming Circuit Court.

ALL CONCUR.

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