

Commonwealth of Kentucky
Court of Appeals

NO. 2001-CA-002777-MR

THOMAS WAYNE GRAHAM

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE GARY D. PAYNE, JUDGE
ACTION NO. 01-CR-00801

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * * * *

BEFORE: DYCHE, AND McANULTY, JUDGES; AND JOHN WOODS POTTER,
SPECIAL JUDGE.¹

McANULTY, JUDGE. Thomas Wayne Graham entered a conditional
guilty plea to the charge of failure to register as a sex
offender, reserving his right to appeal the trial court's denial
of his motion to suppress all evidence of his prior felony

¹ Senior 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.

convictions of rape in the third degree and sodomy in the third degree. We affirm.

On September 29, 1994, Appellant pled guilty in Boyd Circuit Court to third degree rape and third degree sodomy. The court sentenced him to five years on each count to run concurrently with each other. As a result of the sexual offense convictions, Kentucky law required Appellant to register with the appropriate local probation and parole office. See KRS 17.510. Appellant failed to register.

On July 30, 2001, the Grand Jury of Fayette County returned an indictment charging Appellant with failure to register as a sex offender, a class D felony. Appellant moved to suppress all evidence of the prior Boyd County felony convictions based on the assertion that neither his attorney nor the trial judge advised him that, by pleading guilty, he would be subject to criminal prosecution if he failed to keep probation and parole apprised of every change of address. Thus, when Appellant pled guilty in Boyd Circuit Court, he did not fully understand the consequences of his plea and did not make a knowing, intelligent and voluntary waiver of his rights.

Ultimately, the Fayette Circuit Court denied Appellant's motion to suppress the prior convictions for sexual offenses. Thereafter, Appellant entered a conditional guilty plea for the offense of failure to register as a sex offender.

Appellant's sole argument on appeal is that the trial court erred by denying Appellant's motion to suppress the evidence of his prior felony convictions which were the basis of the failure to register charge because the trial court did not advise Appellant that he could be subjected to further prosecution if he failed to register as a sex offender. In support of this argument, Appellant contends that the trial court's failure to advise him of the new registration requirement during the plea colloquy is a violation of Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L. Ed. 2d 274 (1969). We disagree for two reasons -- one reason is procedural and the other is on the merits.

In his prosecution for failing to register, Appellant launched a collateral attack on his underlying convictions for sexual offenses. The appropriate remedy to challenge the 1994 guilty plea is through a RCr 11.42 proceeding. See McGuire v. Commonwealth, Ky., 885 S.W.2d 931, 937 n. 1 (1994); Webb v. Commonwealth, Ky., 904 S.W.2d 226, 239 (1995). Although McGuire and Webb specifically applied to sentence enhancements due to one's status as a persistent felony offender, we believe the reasoning is applicable in this situation because it also a collateral attack on the underlying conviction. Thus, as a matter of procedure, Appellant's motion to suppress the underlying convictions was improperly advanced.

In addition, Appellant's Boykin argument must fail on the merits because Appellant contends that the Boyd Circuit Court failed to advise him on the future consequences of his 1994 guilty plea. "[F]ailure to give such advice about *future* consequences fails to qualify as a constitutional defect." McGuire, 885 S.W.2d at 936 (emphasis in original) (future consequence at issue was that Appellant could be subject to an enhanced sentence based on his status as a persistent felony offender). Moreover, Boykin requires a knowing, voluntary and intelligent waiver of all important constitutional rights. See Boykin, 89 S.Ct. at 1712; Turner v. Commonwealth, Ky. App., 647 S.W.2d 500 (1983).

However, a knowing, voluntary and intelligent waiver does not necessarily include a requirement that the defendant be informed of every possible consequence and aspect of the guilty plea. A guilty plea that is brought about by a person's own free will is not less valid because he did not know all possible consequences of the plea and all possible alternative courses of action. To require such would lead to the absurd result that a person pleading guilty would need a course in criminal law and penology.

Turner, 647 S.W.2d at 500-01.

For the foregoing reasons, the trial court's denial of Appellant's motion to suppress the underlying convictions for sexual offenses is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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