

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000408-MR

LAWRENCE BENDINGFIELD

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE F. KENNETH CONLIFFE, JUDGE
INDICTMENT NO. 99-CR-000398

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: DYCHE, HUDDLESTON, AND KNOPF, JUDGES.

DYCHE, JUDGE. Lawrence Bendingfield appeals from the Jefferson Circuit Court's denial of his CR 60.02 and RCr 10.26 motions to correct the final judgment and sentence in his criminal trial.

We affirm.

On February 11, 1999, Bendingfield was indicted by the Jefferson County Grand Jury for Trafficking in a Controlled Substance, First Degree (KRS 218A.1412), Tampering with Physical evidence (KRS 524.100), and being a Persistent Felony Offender, First Degree (KRS 532.080). On October 25, 1999, the

Commonwealth made an offer to Bendingfield that, if he pled guilty to the offenses, it would recommend a five year sentence on count one, enhanced to ten years as a result of count three, and one year on count two, enhanced to five years as a result of count three. The time served would be "as mandated by law." The plea offer further included the provision that the Commonwealth had no objection to Bendingfield's release on his own recognizance pending sentencing, but that if he failed to appear for sentencing the sentences agreed upon would be twenty years instead of ten.

Bendingfield accepted the offer, moved the court to be allowed to plead guilty in accordance with the agreement, and engaged in the usual lengthy and thorough plea colloquy with the trial court. During this plea colloquy, Bendingfield indicated that he had had sufficient time to consult with his attorney, and was satisfied with the advice he had been given by counsel. He further indicated he was aware of the charges against him, his rights, and the penalties he faced, including the possibility of the enhanced sentence if he failed to appear for sentencing.

Bendingfield failed to appear for his sentencing; a bench warrant was issued for him, and he was ultimately apprehended, and then sentenced in accordance with his agreement with the Commonwealth.

Bendingfield then filed the present motion to correct his judgment and sentence, alleging a due process violation and ineffective assistance of counsel in his plea and sentence. The trial court denied the motion without a hearing, and this appeal followed.

Bendingfield asserts that he was unlawfully induced to enter the plea by the "promises and trickery" of the Commonwealth and the trial court. He argues that the "promise of freedom via" release on his own recognizance induced him to enter into a plea agreement which he did not understand or agree to, and which was unfair. The record refutes these allegations, as set out above. He further claims that his counsel was ineffective for not recognizing that he was a flight risk. Bendingfield has no one but himself to blame for his failure to appear.

Bendingfield argues, with case citations, that it is unlawful to increase a sentence for a violation of shock probation. *Galusha v. Commonwealth*, Ky. App., 834 S.W.2d 696 (1992). We agree; but that is not what happened here. He had not yet been sentenced when he failed to appear. All the trial court did was enforce the agreement he had entered into with the Commonwealth.

We have taken an overall view of the proceedings, and can find no error. The judgment of the Jefferson Circuit Court is affirmed.

KNOPF, JUDGE, CONCURS.

HUDDLESTON, JUDGE, CONCURS IN RESULT.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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