

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000782-MR

DAVID COX

APPELLANT

v. APPEAL FROM CLARK CIRCUIT COURT
HONORABLE JULIA HYLTON ADAMS, JUDGE
ACTION NO. 00-CR-00094

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: BUCKINGHAM, GUIDUGLI, AND SCHRODER, JUDGES.

BUCKINGHAM, JUDGE: David Cox appeals from a judgment of the Clark Circuit Court wherein he was convicted of trafficking in marijuana (more than eight ounces) and was sentenced to one year in prison. Cox entered a conditional guilty plea to the offense, and his one-year sentence was probated for a two-year period. On appeal, he argues that he should have been permitted to plead guilty to a misdemeanor offense because he had entered into a plea agreement with the Commonwealth allowing him to do

so. The circuit court determined otherwise, and we affirm its decision.

Cox was arrested in mid-August 2000 and charged with trafficking in marijuana and possession of drug paraphernalia. Soon after his arrest, Cox advised Detective Horton that he would voluntarily turn over his vehicle to the sheriff, would testify against a co-defendant, and would give information regarding a Mexican male living in Lexington whom he could get to deliver 50 pounds of marijuana to a motel in Winchester. Detective Horton advised Cox that he would recommend leniency and the return of the vehicle if Cox provided such cooperation.

Prior to the issuance of an indictment, the matter proceeded in the Clark District Court. On October 3, 2000, the case was continued by the district court by the agreement of the parties. At the proceeding, the county attorney stated that "I think an agreement has been worked out between the arresting officer and Mr. Early (Cox's attorney) and we have no objection to that." The case was then continued until January 9, 2001.

A Clark County grand jury issued an indictment against Cox on November 9, 2000. Therein, Cox was charged with trafficking in marijuana (more than eight ounces) and possession of drug paraphernalia. On February 5, 2001, Cox's attorney filed a motion to quash the indictment on the ground that the

Commonwealth breached its plea agreement that would have allowed him to plea guilty to only a misdemeanor offense.

An evidentiary hearing was held by the circuit court, and the court subsequently entered an order denying Cox's motion to quash. In its order denying the motion, the court stated that "there was no evidence presented that the Commonwealth and the defendant had come to a meeting of the minds as to their understanding, their intention with respect to their relative rights and duties or certain future performances." The court also noted that the case had been continued in district court by the agreement of the parties "because of the existence of a possible agreement." The court also noted that, although Cox's attorney had tendered a written plea agreement, no agreement had actually been signed by either Detective Horton or by the county attorney.

The circuit court also stated in its order that "[t]here is no dispositive evidence that either the defendant or the Commonwealth acted in reliance upon any such agreement to benefit each other." The court held that "the claimant must have acted in reliance" before any plea agreement would be enforced. The court further stated that "[t]his agreement is not such that the defendant, in reliance on a promise, performed his part of the bargain." Cox's appeal followed.

The law is clear that the Commonwealth in a criminal case should not be allowed "to welsh on its bargain." Workman v. Commonwealth, Ky., 580 S.W.2d 206, 207 (1979), overruled on other grounds by Morton v. Commonwealth, Ky., 817 S.W.2d 218, 222 (1991). See also Smith v. Commonwealth, Ky., 845 S.W.2d 534, 537 (1993). The issue in this case is whether the Commonwealth entered into an agreement with Cox and, if so, whether it breached that agreement. We conclude that there was no plea agreement and, even if there was, that Cox did not keep his part of the bargain.

Cox argues that he reached an agreement with Detective Horton. Citing Goodlet v. Commonwealth, Ky. App., 825 S.W.2d 290 (1992), the Commonwealth responds that there was no enforceable agreement because any agreement had not been approved by either the county attorney or the Commonwealth's attorney. Cox does not reply to this argument, and we agree with the circuit court that there was no plea agreement. First, the principles of the Workman case do not apply to a promise made by a police officer acting without the authority of the prosecutor. See Goodlet, supra. Second, there was no written agreement. The Commonwealth had refused to sign a written agreement tendered by Cox's attorney. Third, as found by the circuit court, there was no "meeting of the minds" concerning specific terms of an agreement.

Cox also asserts that the agreement with Detective Horton had been approved by the county attorney when he stated on October 3, 2000, in the district court that "I think an agreement has been worked out." Contrary to Cox's interpretation, we do not interpret this statement as amounting to a plea agreement entered into by the county attorney. It was merely his statement that he thought an agreement had been worked out.

Second, even if a plea agreement existed, Cox did not perform his part of the bargain. Thus, he could not enforce it. Even though Cox voluntarily turned over his car (which belonged to his mother), he reneged on the portion of the agreement regarding getting the Mexican male living in Lexington to deliver 50 pounds of marijuana to Detective Horton at a motel in Winchester. Detective Horton testified that Cox's mother had called him and advised him that Cox would not help set up the Mexican male because he was concerned for his safety.

Cox responds to these arguments by stating that his attorney and Detective Horton had not been able to make contact with each other and that the indictment was issued approximately two months before his district court case was scheduled to again appear on the docket. He asserts that he was available and ready to fulfill his part of the bargain when the indictment was issued.

Having reviewed the tape of the evidentiary hearing in the circuit court, we will not disturb the fact finding by the court that Cox failed to perform his part of the bargain. Detective Horton had attempted to get Cox's cooperation concerning the Mexican male situation, but he was unable to do so. Further, he had been told in a phone call from Cox's mother that Cox would not complete that part of any alleged agreement. These facts are sufficient to support the ruling of the circuit court.¹

The judgment of the Clark Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

James R. Early
Lexington, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler III
Attorney General of Kentucky

J. Gary Bale
Assistant Attorney General
Frankfort, Kentucky

¹ The disposition of the car is a matter that is not before this court.