

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002167-MR

TEDDY SHAWN HAWKINS

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE GARY D. PAYNE, JUDGE
ACTION NO. 02-CR-00094

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: BAKER, COMBS, AND SCHRODER, JUDGES.

SCHRODER, JUDGE. Teddy Shawn Hawkins (Hawkins) appeals his convictions for possession of a controlled substance, first degree, (KRS 218A.1415), and possession of drug paraphernalia, second degree, (KRS 218A.500), under a conditional plea for which he received a sentence of five years' imprisonment. His conditional plea reserved the right to appeal the denial of a motion for specific performance of a deal supposedly made between him and his arresting officer. We agree with the

Commonwealth that a police officer has no authority to enter into a plea agreement with a defendant, and even if the prosecutor had agreed with such a deal, Hawkins did not perform according to the terms he said were in the contract. Hence, we affirm.

Hawkins was stopped by the Lexington Metro Police for expired registration plates. Hawkins could produce no operator's license and was placed under arrest for no operator's license and expired vehicle registration plates, and taken to the station. Upon a search of the car, the officers found a bag of cocaine in the ashtray and rolling papers were found in his pants pocket. Hawkins begged Sgt. Jack Dawson to allow him to become an informant as he was a father of three and could not go back to prison. Sgt. Dawson said he was initially reluctant to talk to Hawkins because he was from Detroit and it would be too hard to keep tabs on Hawkins. Hawkins kept talking, and Sgt. Dawson explained that if Hawkins would assist in getting big time dope dealers, not just middlemen, he would inform the prosecutor of Hawkins's cooperation, but could only make a recommendation to the prosecutor. Sgt. Dawson had arrested Hawkins and taken him to the station where they discussed the possibility and responsibilities of becoming an informant. Hawkins requested he not be jailed because everyone would know he was turning informant to work off the charges. Sgt. Dawson

changed the ticket to an open court date and did not jail Hawkins but did allow him to keep his copy of the citation to show his (Hawkins's) friends that he had been arrested for the traffic charges only and the reason for going down to the station was because of the arrest. Hawkins was allowed to leave and was told to get back with Sgt. Dawson the first of the week. Hawkins returned and signed a "Cooperating Mutual Agreement" which waived liability while Hawkins worked as an informant. The agreement did not contain any information on what was expected of Hawkins or what he would receive in return. Sgt. Dawson explained the oral agreement was that in exchange for not taking Hawkins in at that time, Hawkins would have to get big time dope dealers - ounces or above, and that he would have to testify. The discussion did not specify any particular number of drug buys or what else Sgt. Dawson would do about the charges, other than inform the prosecutor of Hawkins's cooperation. Hawkins was told to stay in contact with Sgt. Dawson. Hawkins did set up one buy, but Sgt. Dawson said Hawkins did not follow instructions and botched the alleged buy so no arrests were made. Hawkins quit contacting Sgt. Dawson who called the cell phone number of Hawkins's girlfriend and told her to have Hawkins contact him. Hawkins contacted Sgt. Dawson the next day upset about the call to his girlfriend. Hawkins had no further contact with Sgt. Dawson who began

looking for him until he (Dawson) was promoted. He informed his successor that Hawkins had not lived up to his understanding and eventually Hawkins was arrested on the drug charges.

Hawkins filed a motion to suppress the drug evidence, which was denied. He also filed a motion for specific performance of an alleged deal to drop the drug charges, which motion was also denied. The conditional plea was entered reserving for appeal, the question of whether the trial court erred in not enforcing an agreement between a police officer and Hawkins to drop the drug charges in exchange for his work as an informant.

On appeal, Hawkins alleges he fulfilled his obligations as an informant and therefore the drug charges should be dismissed. Hawkins misconstrues his cooperation with the police department as a plea agreement. He never discussed an agreement with the Commonwealth Attorney. Under KRS 15.725, the Commonwealth Attorney decides which cases to present to the Grand Jury and what deals can be made (subject to the court's approval). The United States Supreme Court recognized in United States v. Lovasco, 431 U.S. 783, 97 S. Ct. 2044, 52 L. Ed. 2d 752 (1977), that a police officer has no authority to enter into any form of immunity or non-prosecution agreement with an accused. Workman v. Commonwealth, Ky., 580 S.W.2d 206 (1979) (overruled on other grounds by Morton v. Commonwealth, Ky., 817

S.W.2d 218 (1991)), and Shanklin v. Commonwealth, Ky. App., 730 S.W.2d 535 (1987), cited by appellant, both involve deals made by the Commonwealth Attorney and not by police officers. The police officers can propose or set up a proposal, but any agreement has to be approved by the Commonwealth Attorney.

Hawkins also contends he performed the agreement with a representative of the government and the deal should be specifically enforced. Even if we agreed that a police officer could bind the Commonwealth Attorney by some plea agreement, the facts of this case fall short of any deal. Both parties agree there were not many specifics, so many buys, etc., in exchange for what. In fact, the uncontroverted testimony of Sgt. Dawson was that if Hawkins worked with him, he would inform the prosecutor of the extent of his cooperation with a recommendation. There was no deal with the prosecutor and there was no performance of the agreement with the police officer. See Putty v. Commonwealth, Ky., 30 S.W.3d 156 (2000).

For the foregoing reasons, the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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