

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002402-MR

JUSTIN B. THOMAS

APPELLANT

v. APPEAL FROM FULTON CIRCUIT COURT
HONORABLE WILLIAM LEWIS SHADOAN, JUDGE
ACTION NO. 02-CR-00043

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: KNOPF, TACKETT AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Justin B. Thomas brings this appeal from an October 10, 2002, judgment of the Fulton Circuit Court. We affirm.

Appellant, Justin B. Thomas, was indicted by a Fulton County Grand Jury for the offenses of complicity to promote contraband in the first degree, attempted unlawful transaction with a minor in the first degree, attempted unlawful transaction with a minor in the second degree and with being a persistent

felony offender in the second degree. Appellant was arraigned on the indictment and entered a plea of not guilty.

Pursuant to a plea bargain, appellant subsequently pled guilty to the amended charges of complicity to promote contraband in the first degree and two counts of attempted unlawful transaction with a minor in the second degree. The persistent felony offender charge was dismissed. Appellant was sentenced to one year on the promoting contraband charge and twelve months each on the attempted unlawful transaction charges. The sentences were ordered to run concurrently for a total of one year in the penitentiary. This appeal follows.

Appellant contends the circuit court erred by failing to dismiss the indictment. He asserts that although his "conduct may be culpable under other statutes, his conduct does not constitute Promoting Contraband" under Kentucky Revised Statutes (KRS) 520.050. Appellant claims he "committed his offense outside the walls of the detention facility" and the "marijuana never made it into the jail." As such, he argues that KRS 520.050 is inapplicable and the indictment should have been dismissed.

Appellant contends he entered a conditional guilty plea; however, the record does not so reflect. The guilty plea entered on September 26, 2002, does not contain any language indicating the plea was conditional, nor does the record reflect

that the issue was properly preserved in writing for review by this Court. Ky. R. Crim. P. 8.09.

The effect of entering a voluntary guilty plea is that all defenses, other than that the indictment charges no offense, are waived. Quarles v. Commonwealth, Ky., 456 S.W.2d 693 (1970); Centers v. Commonwealth, Ky. App., 799 S.W.2d 51 (1990). Although appellant does not clearly articulate his position on appeal, we construe his argument as a claim the indictment did not charge an offense.¹ The Supreme Court of Kentucky, in Thomas v. Commonwealth, Ky., 931 S.W.2d 446, 449 (1996), stated "[a]ll that is necessary to 'charge an offense' as required by RCr 8.18, is to name the offense. Furthermore, an indictment may be 'unquestionably defective and 'loose, but not invalid.'" Id. at 449.

By entering the guilty plea, appellant admitted he engaged in the act described in the indictment (i.e., complicity to promote contraband in the first degree) and admitted guilt to the substantive crime. See United States v. Broce, 488 U.S. 563, 109 S.Ct. 757, 762, 102 L.Ed.2d 927, 936 (1989). Therefore, appellant's argument on appeal that his act did not constitute complicity to promote contraband is misplaced.

¹ Appellant's only contention is that the "trial court erred by failing to dismiss the indictment" because the "conduct does not constitute Promoting Contraband."

Having reviewed the circuit court record in detail, this Court is of the opinion that the indictment handed down by the Fulton County Grand Jury did charge an offense and that appellant subsequently entered a guilty plea. Therefore, we consider appellant's contention to be without merit.

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

ALL CONCUR.

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