

RENDERED: NOVEMBER 7, 2003; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2003-CA-000122-MR

MATTHEW T. ADAMS

APPELLANT

APPEAL FROM HENDERSON CIRCUIT COURT
v. HONORABLE STEPHEN A. HAYDEN, JUDGE
INDICTMENT NO. 02-CR-00125

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

REVERSING AND REMANDING

** ** * * *

BEFORE: BAKER and SCHRODER, Judges; HUDDLESTON, Senior Judge.¹

HUDDLESTON, Senior Judge: Matthew Adams pled guilty to an amended charge of first-degree sexual abuse and to being a persistent felony offender in the second degree in exchange for

¹ Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

the Commonwealth's recommendation that he be sentenced to five years' incarceration. He was sentenced to the recommended five years, as well as a three-year period of conditional discharge. Adams appeals from the judgment and final sentence imposed.

When Adams appeared for sentencing, he moved the court to allow him to withdraw his plea of guilty. Adams offered no reason for the withdrawal other than that he had changed his mind and no longer considered pleading guilty the right thing to do. The court denied Adams' motion to withdraw, and proceeded to sentence him pursuant to the plea agreement. However, the circuit court also sentenced Adams to a period of conditional discharge which his plea agreement with the Commonwealth did not contemplate. Adams' argument on appeal is that by sentencing him to a greater punishment than his agreement contemplated, the circuit court effectively rejected the plea agreement and was therefore required by Kentucky Rules of Criminal Procedure (RCr) 8.10 to grant him the option to withdraw his plea of guilty.

The Commonwealth argues that the circuit court properly denied Adams' motion to withdraw his guilty plea, and insists that we may not disturb that decision absent a finding that the circuit court abused its discretion. However, this argument misunderstands the nature of Adams' appeal. We are not called upon to review the decision to deny his motion to withdraw his guilty plea; rather, his appeal is directly from

the final judgment and sentence entered upon that plea. Even following an unconditional guilty plea, a defendant retains the right to appeal when a sentence is imposed contrary to law.² Therefore, we address Adams' appeal on its merits.

Kentucky Revised Statutes (KRS) 532.043 provides, in relevant part:

- (1) In addition to the penalties authorized by law, any person convicted of, pleading guilty to, or entering an Alford plea to a felony offense under KRS Chapter 510, KRS 529.030, KRS 530.020, 530.064, 531.310, or 531.320 shall be subject to a period of conditional discharge following release from:
 - (a) Incarceration upon expiration of sentence;
 - or
 - (b) Completion of parole.
- (2) The period of conditional discharge shall be three (3) years.

The circuit court was correct that KRS 532.043 is mandatory and requires that Adams be subject to a three-year period of conditional discharge in addition to his sentence.

² Hughes v. Commonwealth, Ky., 875 S.W.2d 99 (1994).

The Commonwealth argues that Adams received his bargained-for sentence, and the period of conditional discharge should be viewed merely as a collateral consequence of his plea. However, the period of conditional discharge mandated by KRS 432.043 is a criminal punishment in that it subjects defendants such as Adams to the possibility of serving an additional three years' imprisonment in the event of a violation of a term of conditional discharge.³

The circuit court was correct that Adams is subject to the mandatory provisions of KRS 432.043. However, his plea agreement with the Commonwealth did not contemplate the required period of conditional discharge. Therefore, the circuit court was required to reject the plea agreement as violative of KRS 432.043. At that point, RCr 8.10 required the circuit court to notify Adams of its rejection of the plea agreement and allow him to withdraw his guilty plea if he desired to do so.⁴

The judgment is reversed and this case is remanded to Henderson Circuit Court with directions to allow Adams to withdraw his guilty plea if he so desires.

ALL CONCUR.

³ Purvis v. Commonwealth, Ky., 14 S.W.3d 21, 24 (2000). See also Lozier v. Commonwealth, Ky. App., 32 S.W.3d 511 (2000).

⁴ Kennedy v. Commonwealth, Ky. App., 962 S.W.2d 880 (1997).

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