

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000279-MR

KENOBI WILLS

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE EDWIN M. WHITE, JUDGE
INDICTMENT NO. 02-CR-00151

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * * **

BEFORE: COMBS, DYCHE, AND JOHNSON, JUDGES.

DYCHE, JUDGE. Kenobi Wills appeals from a judgment and sentence of the Christian Circuit Court following his plea of guilty to Robbery, First Degree, and Persistent Felony Offender, Second Degree. His enhanced sentence was twenty years; the ground for his appeal is that he should have been allowed to withdraw his plea of guilty.

Criminal Rule 8.10 provides, *inter alia*, that "[a]t any time before judgment the court may permit the plea of guilty or

guilty but mentally ill, to be withdrawn and a plea of not guilty substituted." However, the word "may" in RCr 8.10 does not give a trial judge unfettered discretion to deny a motion to withdraw a guilty plea without affording the defendant a hearing on the motion. Our case law is clear that the discretion to deny a motion to withdraw a guilty plea exists only after a determination has been made that the plea was voluntary. If the plea was involuntary, the motion to withdraw it must be granted. Haight v. Commonwealth, Ky., 760 S.W.2d 84, 88 (1988); Allen v. Walter, Ky., 534 S.W.2d 453, 455 (1976); Wood v. Commonwealth, Ky., 469 S.W.2d 765, 766 (1971). Federal cases are in accord. United States v. Teller, 762 F.2d 569, 578 (7th Cir. 1985); Hammond v. United States, 528 F.2d 15, 18-19 (4th Cir. 1975); Cooks v. United States, 461 F.2d 530, 532 (5th Cir. 1972).

Rodriguez v. Commonwealth, Ky., 87 S.W.3d 8, 10 (2002). We have watched the videotape of the plea colloquy in this case and cannot find any indication that the plea was anything but knowing, free, informed, and voluntary. No reason has been put forward for the trial court to have allowed withdrawal of the plea. The proceedings below, and the brief filed with this court, offer no reason, sound or unsound, legal or factual, that the trial court abused its discretion. The order and judgment of the Christian Circuit Court are affirmed.

ALL CONCUR.

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