

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001024-MR

DAMON McCORMICK

APPELLANT

v. APPEAL FROM HENDERSON CIRCUIT COURT
HONORABLE STEPHEN A. HAYDEN, JUDGE
ACTION NO. 01-CR-00189

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: EMBERTON, CHIEF JUDGE; DYCHE AND COMBS, JUDGES.

EMBERTON, CHIEF JUDGE. Damon McCormick appeals from an order of the trial court denying his motion to withdraw his guilty plea without holding an evidentiary hearing. We affirm.

On January 29, 2003, pursuant to a plea agreement, McCormick appeared with counsel and entered a plea of guilty to first-degree unlawful transaction with a minor and to harassment. Prior to his sentencing on April 23, 2003, McCormick sent a handwritten letter to the trial court stating

that he had been pressured by his attorney into entering the plea because counsel had been unprepared for the trial of his case. He requested that he be permitted to withdraw his guilty plea. On the day of McCormick's sentencing, because of difficulties in the attorney-client relationship, McCormick's counsel moved to withdraw from the case. The trial court sustained the motion and McCormick appeared with a new attorney appointed to represent him at the sentencing hearing. At that time, the new counsel made an oral request to withdraw the guilty plea. No request, however, was made for an evidentiary hearing. The Commonwealth opposed the motion citing the colloquy that occurred between the trial court and McCormick when accepting the plea. The court denied the motion to withdraw the plea and this appeal followed.

RCr¹ 8.10 provides that "[a]t any time before judgment the court may permit the plea of guilty or guilty but mentally ill, to be withdrawn and a plea of not guilty substituted." In Rodriguez v. Commonwealth,² the court held that under the rule the trial court does not have unfettered discretion to deny the withdrawal of a guilty plea. "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

¹ Kentucky Rules of Criminal Procedure.

² Ky., 87 S.W.3d 8 (2002).

voluntary. If the plea was involuntary, the motion to withdraw it must be granted.”³ The voluntariness of the plea must be determined by considering all of the relevant circumstances.⁴

An unsubstantiated claim that a guilty plea was involuntary does not mandate an evidentiary hearing. Moreover, the trial court is not required to sua sponte conduct a hearing.⁵

Upon review of the record, we conclude that the trial court correctly found that McCormick’s guilty plea was voluntary and the motion to withdraw the plea was properly denied. At the time the plea was entered, he acknowledged that he understood the waiver of his constitutional rights and the charges. He also expressed that he was pleased with his counsel’s representation and the plea agreement. We find no abuse of discretion.

The order is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Bruce A. Brightwell
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BRIEF FOR APPELLEE:

Gregory D. Stumbo
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³ Id. at 10. (Emphasis original.)

⁴ Id.

⁵ See Beecham v. Commonwealth, Ky., 657 S.W.2d 234 (1983).