

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001255-MR

ALAN WHITE

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS J. KNOFF, JUDGE
ACTION NO. 01-CR-001489

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

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

DYCHE, JUDGE. Alan Juan White, appellant herein, was indicted by the grand jury of Jefferson County for Rape, first degree, Sexual Abuse, first degree, Unlawful Imprisonment, first degree, and Resisting Arrest (two counts), and for being a Persistent Felony Offender, second degree.

His jury trial on those offenses was scheduled for October 8, 2002. On that date, after extensive consultation with his appointed counsel, his family, and with the trial

court, he entered a plea of guilty to the primary charges, with the Persistent Felony Offender charge being dismissed by the Commonwealth. The recommendation for sentencing upon his plea was ten years' confinement for the Rape charge, five years for the Sexual Abuse, and twelve months each on Unlawful Imprisonment and Resisting Arrest, all to run concurrently for a total of ten years.

Prior to sentencing, White sought to withdraw his plea, giving as his reasons,

the seriousness of the charged offenses, the potential penalties if convicted, the inherent pressures associated with the contemplation of the previously withdrawn offer and the familial concerns expressed to him on October 8th, 2002 regarding the risks associated with jury trial all contributed to overbear his will such that he entered into a plea of guilty.

The trial court denied the motion without holding a hearing. Following sentencing in accordance with the earlier agreement, this appeal was filed. We affirm.

White's sole ground for relief is that the trial court did not sufficiently consider his motion prior to denying same, primarily because no hearing was held. RCr 8.10 gives the trial court discretion in deciding a motion such as we have here. And, as argued by White, Bronk v. Commonwealth, Ky., 58 S.W.3d 482, 486 (2001), mandates that the trial court consider "the

totality of the circumstances surrounding the guilty plea." It is undisputed by the record that the trial court did exactly that in this case.

From the plea colloquy it is apparent that the trial court had taken extraordinary pains to assure that White understood his rights, the implications of his plea change, and that he not be "frightened" into an invalid or involuntary plea of guilty. White, under oath, indicated that he had had sufficient time to confer with counsel and with his family. He also indicated that he was pleading guilty because he was guilty, and that no one had coerced or threatened him into his plea.

We have examined the record carefully and can find no ground for reversing the trial court. There was no error or abuse of discretion. The order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Mark Wettle
Louisville, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

David A. Smith
Assistant Attorney General
Frankfort, Kentucky