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NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-000394-MR

RONALD KNIGHT

APPELLANT

v. APPEAL FROM LARUE CIRCUIT COURT
HONORABLE LARRY D. RAIKES, JUDGE
ACTION NO. 02-CR-00020

COMMONWEALTH OF KENTUCKY

APPELLEE

CONSOLIDATED WITH AND TO BE HEARD WITH:
NO. 2004-CA-000400-MR

RONALD KNIGHT

APPELLANT

v. APPEAL FROM LARUE CIRCUIT COURT
HONORABLE LARRY D. RAIKES, JUDGE
ACTION NO. 02-CR-00046

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER AND SCHRODER, JUDGES; HUDDLESTON, SENIOR JUDGE.¹

BARBER, JUDGE: Appellant, Ronald Knight (Knight), appeals from

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 order of the Larue Circuit Court denying Knight the right to withdraw his guilty pleas to two counts of second-degree rape and sodomy, and four counts of incest and sexual abuse in the first degree. We affirm the trial court's ruling.

Knight was charged with two counts of rape, two counts of sodomy and four counts of sexual abuse. The charges stemmed from allegations of abuse against his minor children. Knight pled guilty to the charged offenses, and was sentenced to ten years imprisonment. Knight then made a motion to withdraw his guilty plea. He claimed that he had not been told that the polygraph examination he agreed to take would be administered by the Kentucky State Police. Knight also asserted that defense counsel had told him that the guilty plea was "just a formality." Knight moved that the plea be set aside. That motion was denied by the court.

Knight argues that the plea he entered was conditional. The court's final judgment states that Knight entered an "unconditional plea of guilty." The plea agreement stated that if Knight passed a polygraph examination, his plea of guilty would be set aside. The record reflects that Knight failed the polygraph examination. Knight asserts that he did not realize he was entering a guilty plea when the plea was made. This assertion is controverted by the record showing the trial court's questioning of Knight and determination that the

plea was entered after Knight was advised regarding its binding nature.

The record shows that Knight entered his plea of guilty on a standard "Motion to Enter Guilty Plea" form. The form does not contain any notation showing that the plea of guilty was conditional. The form recites the statement that the plea of guilty is freely and voluntarily made and that the defendant was promised nothing in exchange for his plea of guilty. The Commonwealth's "Offer on a Plea of Guilty" contains a statement showing that "the Commonwealth will agree to set aside this plea if the defendant passes a lie detector as ordered by the Commonwealth. If the Defendant fails the polygraph, the Defendant is to serve the full sentence."

Knight contends that the trial court erred in accepting a guilty plea that was not in conformity with the Kentucky Rules of Criminal Procedure. RCr 8.08 holds that a defendant may plead guilty, not guilty, or guilty, but mentally ill. In this case Knight pled guilty to the charges against him, once he was found to have failed the polygraph test. Knight claims that his guilty plea was equivocal, and therefore, improper. The record shows that Knight agreed to plead guilty unequivocally if he failed the polygraph test. He failed the test and was bound by the terms of the plea agreement.

Next Knight asserts that his plea of guilty was conditional, but was not a proper conditional guilty plea and should be set aside for that reason. A conditional guilty plea is acceptable only where the defendant reserves in writing, "the right, on appeal from the judgment, to review of the adverse determination of any specified trial or pretrial motion." RCr 8.09 provides that a conditional guilty plea may be entered with the approval of the court, if the rights reserved are detailed in writing.

Knight argues that due to the addition of the language regarding the polygraph test his guilty plea was conditional, but was not in accordance with RCr 8.09. He contends that for this reason the trial court erred in accepting it and the plea should be set aside. The law does not establish a specific outline for the wording of a plea agreement. The commentary to the federal sentencing laws states that:

The plea agreement procedure does not attempt to define criteria for the acceptance or rejection of a plea agreement. Such a decision is left to the discretion of the individual trial judge.

Federal Rules of Criminal Procedure 11, Advisory Committee Notes, (1974). This commentary recognizes the discretion granted the prosecution and the trial court when outlining and enforcing plea agreements. We find nothing in Kentucky law

which would hold the plea agreement entered into in this case unenforceable.

Knight contends that the trial court erred by refusing to set aside his plea of guilty upon motion by the defense. An acceptable plea “. . . must represent a voluntary and intelligent choice among the alternative courses of action open to the defendant.” Centers v. Commonwealth, 799 S.W.2d 51, 52 (Ky.App. 1990). A court may accept a guilty plea where there is sufficient factual basis for the plea in the record. Commonwealth v. Corey, 826 S.W.2d 319 (Ky. 1992). Knight argues that no basis for the plea existed in the record, and that for this reason, it should be set aside. The record contains substantial evidence supporting the charges against Knight. By pleading guilty, Knight avoided a potential sentence in excess of that he received as a result of his plea of guilty.

The prosecution is granted discretion by law to engage in plea bargain agreements with a defendant. Commonwealth v. Corey, 866 S.W.2d 319, 321 (Ky. 1992). Knight and defense counsel both signed and accepted the Commonwealth's offer. The plea was conditional until Knight failed the polygraph test. A conditional plea of guilty is strictly limited to the terms contained in the plea. Waddell v. Commonwealth, 893 S.W.2d 376, 380 (Ky.App. 1995). Once Knight failed the polygraph, his plea was an unconditional plea of guilty to the charges against him.

The court's final judgment of conviction shows that Knight's plea was unconditional, and that Knight agreed to the terms offered by the Commonwealth. The court stated that it ascertained that the plea was made knowingly, intelligently and voluntarily. There is no error in the trial court's ruling.

No reversible error will be found if the record shows that the defendant knew the rights he was waiving by his plea, even if the plea is non-standard. Johnson v. Commonwealth, 103 S.W.3d 687, 691 (Ky. 2003). The trial court has discretion as to whether to set aside a plea on defendant's motion in light of the totality of the circumstances. Bronk v. Commonwealth, 58 S.W.3d 482, 486 (Ky. 2001). The trial court's ruling will not be set aside unless an abuse of that discretion is shown. Knight has failed to show an abuse of the trial court's discretion sufficient to reverse his conviction. For this reason, the trial court's ruling is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

G. William Bailey, Jr.
Elizabethtown, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

Clint E. Watson
Assistant Attorney General
Frankfort, Kentucky