

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2004-CA-001206-MR

TROY D. ABRAMS, JR.

APPELLANT

v. APPEAL FROM MADISON CIRCUIT COURT  
HONORABLE JULIA HYLTON ADAMS, JUDGE  
ACTION NO. 02-CR-00113

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: BARBER, KNOFF AND SCHRODER, JUDGES.

SCHRODER, JUDGE: This is an appeal from an order denying appellant's RCr 11.42 motion alleging that the Commonwealth fraudulently obtained a plea bargain with appellant. Appellant argues that the Commonwealth defrauded and deceived appellant into accepting the plea agreement in which he received two three-year sentences for two charges of fourth-degree assault. From our review of the record, appellant was fully informed that the fourth-degree assault charges were being enhanced to Class D felonies under KRS 508.032, and that he could have received a

maximum of fifteen years' imprisonment if he went to trial. Further, there was no evidence in the record that appellant was defrauded or deceived by the Commonwealth into accepting the plea agreement. Accordingly, the record established that appellant's plea was not obtained through fraud or deceit and was voluntary. Hence, we affirm.

On August 1, 2002, appellant, Troy Abrams, was indicted on one count of assaulting a family member (Abrams' father). A superceding indictment was returned against Abrams on October 17, 2002, charging the additional crime of assault in the second degree. The victim of the second-degree assault charge was Abram's girlfriend, Tonia Laswell.

On November 21, 2002, pursuant to a plea agreement, Abrams entered a plea of guilty to the charge of fourth-degree assault relative to his father and to the amended charge of fourth-degree assault as to his girlfriend. Both charges were classified as felonies on his waiver of further proceedings with petition to enter guilty plea form. Also on that form, Abrams was advised that the maximum punishment for the offenses charged in the indictment was fifteen years' imprisonment, and that the Commonwealth had agreed to recommend a sentence of three years in prison on each charge of fourth-degree assault, to be served consecutively, not to exceed a total of six years. The order evidencing the guilty plea noted that the two fourth-degree

assault charges were for assaults on family members and were felonies. The trial court entered its final judgment on January 23, 2003, sentencing Abrams in accordance with the Commonwealth's recommendation.

On May 21, 2004, Abrams filed a *pro se* RCr 11.42 motion to vacate or set aside the judgment, alleging that his guilty plea was not voluntary because the Commonwealth obtained a plea agreement with him through fraud and deceit. Specifically, Abrams argued that the Commonwealth deceived him into believing that the two fourth-degree assault charges (as amended) could be enhanced to Class D felonies pursuant to KRS 508.032. From the order denying the motion, Abrams now appeals.

Abrams maintains that the Commonwealth misrepresented to him that they had sufficient evidence to enhance the two fourth-degree assault charges to Class D felonies pursuant to KRS 508.032. Under KRS 508.032, a third or subsequent fourth-degree assault conviction within five years for an assault against a family member or member of an unmarried couple can be enhanced from a misdemeanor to a Class D felony. Abrams contends that he did not have three prior fourth-degree assault convictions within five years against family members. Accordingly, he insists that he could not have received a sentence greater than one year on each fourth-degree assault charge. A valid guilty plea waives all defenses except that the

indictment did not charge an offense. Bush v. Commonwealth, 702 S.W.2d 46 (Ky. 1986). Thus, Abrams waived his right to challenge the sufficiency of the evidence when he pled guilty.

As to Abrams' claim that the Commonwealth deceived or defrauded him into accepting the plea agreement, there is no evidence of such fraud or deceit in the record, other than Abrams' self-serving allegations. The record established that Abrams knew that the maximum time he could receive on the originally indicted offenses (one count of fourth-degree assault and one count of second-degree assault) if he went to trial was 15 years' imprisonment, and that the two fourth-degree assault charges as amended were considered Class D felonies. With the full knowledge of this, Abrams agreed to three years on each fourth-degree assault charge, to be served consecutively. Accordingly, Abrams' plea was entered knowingly, intelligently and voluntarily. See Thompson v. Commonwealth, 147 S.W.3d 22 (Ky. 2004).

Abrams next argues that the indictment was deficient because it did not give the degree of the assault offense charged. The indictment clearly states that the charge was "ASSAULT OF A FAMILY MEMBER KRS 508.032 - CLASS D FELONY." Hence, it met the requirements of RCr 6.10(3).

For the reasons stated above, the order of the Madison Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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