

RENDERED: JANUARY 6, 2006, 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2004-CA-001809-MR

CHARLES BRADFORD OWENS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE A. C. MCKAY CHAUVIN, JUDGE  
INDICTMENT NO. 83-CR-001375

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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

DYCHE, JUDGE: On three separate occasions in 1983, appellant, Charles Bradford Owens, broke into the home of a lady, forcibly raped and sodomized her, and stole items from her. When called to account for these heinous crimes, by indictment by the grand jury of Jefferson County, Owens entered into a plea agreement whereby the Commonwealth Attorney recommended a sentence of three twenty-year terms, to be run concurrently.

Following a sentencing hearing during which the trial court considered the pre-sentence report filed by the division of probation and parole, as well as a victim-impact statement in which the victim understandably asked if Owens could not be incarcerated for life, the trial court sentenced Owens to three twenty-year terms, to be served consecutively.

Seven years later, Owens began his attempts to avoid the consequences of his actions, filing an RCr 11.42 motion to vacate his conviction, asserting that the trial court's deviation from the agreement between him and the Commonwealth made his plea involuntary. That motion was denied by the trial court, but on appeal this court remanded for a determination of whether the plea was knowing and voluntary. That hearing was held, resulting in a finding that the plea was knowing and voluntary; the motion was denied, and this court affirmed.

On December 30, 2003, 19 years after sentencing, Owens again sought relief from his conviction, asserting inadequate representation at the trial level, unfair result, parole eligibility if he had been sentenced under the agreement, and failure to allow him to withdraw his plea. The motion was denied, and this appeal followed. We affirm.

Owens claims that the Commonwealth was guilty of fraud in inducing him to plead guilty in two ways: allowing the victim to express her view that he should be imprisoned for

life; and in its response to the trial judge concerning the original sentencing. We disagree. The victim was certainly entitled to express her feelings; she had, on three separate occasions, been the victim of burglary, rape, sodomy, and robbery. Her comments were appropriate, worthy of consideration, and certainly do not constitute a breach of the plea agreement, much less fraud.

Owens next claims that a response by the Commonwealth to an inquiry by the trial court concerning the original agreement and sentencing also constitutes fraud. Again, we disagree. The Commonwealth's response to the trial court was, at worst, ambiguous, stating that the trial court's decision to run the sentences consecutively was correct and appropriate. This does not constitute fraud.

The final argument put forth by Owens is that the trial court was required to allow him to withdraw his plea when it decided not to honor the plea agreement. That was not the rule in effect at the time of the sentencing. At that time, RCr 8.10 provided that the trial court "may" permit the withdrawal of a plea; there was no mandatory language. In any event, there was no request by Owens to withdraw his plea, only a post-conviction relief motion seven years later.

The order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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