

RENDERED: FEBRUARY 3, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2004-CA-002454-MR

ROBERT MANLEY III

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE ROGER L. CRITTENDEN, JUDGE
ACTION NO. 01-CR-00012

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER, HENRY, AND KNOPF, JUDGES.

KNOPF, JUDGE: In May 2004, a Franklin County jury convicted Robert Manley, III, of first-degree rape.¹ Manley was accused of forcing intercourse upon a woman with whom he had been flirting and kissing after she had indicated that she wished the contact to go no further. Following the guilt-phase verdict, Manley waived his right to appeal and to a penalty phase trial and pled

¹ KRS 510.040.

guilty to charges that he was a second-degree persistent felon.² In exchange for Manley's concessions, the Commonwealth recommended that he be sentenced to thirty years in prison. Prior to sentencing, Manley moved to withdraw his plea. The trial court conducted a hearing on the motion, at which Manley urged that his plea be deemed involuntary because the jury's guilty verdict had left him in such a state of shock and emotional turmoil that he did not understand what he was doing. By order entered October 25, 2004, the trial court found that Manley "understood completely the consequences of his plea and understood the potential consequences of a jury verdict and sentencing," and denied his motion to withdraw. It then, by judgments entered November 17, 2004, convicted Manley of rape in accord with the jury verdict and sentenced him in accord with his plea to thirty years' imprisonment. It is from those judgments and the October order denying his motion to withdraw his plea that Manley has appealed. He contends that the court erred by finding that he understood his plea. In particular, he maintains that he did not intend to plead guilty to the rape charge and thereby give up his right to appeal from the rape conviction.

As Manley notes, to be valid under the federal Constitution a guilty plea must be sufficiently knowing and

² KRS 532.080.

voluntary to represent a true choice by the defendant.³ If a plea is not voluntary, the trial court must grant a motion to withdraw it.⁴ Whether the plea is voluntary is to be determined from the totality of the surrounding circumstances, which generally are to be established at an evidentiary hearing.⁵ This Court reviews the trial court's voluntariness finding for clear error.⁶ And we review the trial court's decision not to permit withdrawal of a voluntary plea for abuse of discretion.⁷

We agree with the trial court that Manley's plea bargain was voluntary, and we are convinced that the trial court did not abuse its discretion by denying Manley's motion to withdraw from it. The record shows that before Manley accepted the plea, the trial court, the Commonwealth's Attorney, and Manley's attorney all explained to him that because of his PFO status the jury would sentence him to at least twenty years in prison and could return a life sentence. They also explained that the Commonwealth's thirty-year offer was conditioned upon Manley's giving up his right to appeal from the rape conviction. They did not ask him to plead guilty to the rape. There was no

³ Rodriguez v. Commonwealth, 87 S.W.3d 8 (Ky. 2002).

⁴ *Id.*

⁵ *Id.*

⁶ Rigdon v. Commonwealth, 144 S.W.3d 283 (Ky.App. 2004).

⁷ *Id.*

need to because he had already been convicted of it. His waiver of the right to appeal does not imply anything else, nor does it suggest any misunderstanding on Manley's part. Following these explanations, Manley was permitted to consult in private with his attorney and his father. Apparently satisfied with that consultation, Manley then announced that he wished to accept the Commonwealth's bargain. Thereupon, the court led Manley through the formal plea colloquy and again explained to him the rights he was waiving, including the right to appeal, and the PFO charge to which he was pleading guilty. Again, Manley indicated that he understood the court's explanations and wished to proceed. Manley did not appear confused, and, unlike the defendant in Maxwell v. Commonwealth,⁸ on which Manley relies, Manley had the benefit of counsel. Although Manley's situation was obviously stressful, that alone does not invalidate his plea.

In light of the several more than sufficient explanations Manley received and his independent consultation with his counsel and his father, the trial court did not clearly err by finding that he adequately understood his options and made a knowing and voluntary decision to accept the Commonwealth's bargain. And because that bargain was neither oppressive nor unreasonable nor in any way tainted by the

⁸ 602 S.W.2d 169 (Ky. 1980).

Commonwealth's overreaching, we are convinced that the trial court did not abuse its discretion by upholding it. Accordingly, we affirm the November 17, 2004, judgments of the Franklin Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Willie E. Peale, Jr.
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General

Perry T. Ryan
Assistant Attorney General
Frankfort, Kentucky