

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-002579-DG

W. N., A CHILD UNDER EIGHTEEN

APPELLANT

ON DISCRETIONARY REVIEW FROM GRANT CIRCUIT COURT
v. HONORABLE STEPHEN L. BATES, JUDGE
ACTION NO. 04-XX-00006

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * *

BEFORE: DYCHE, KNOPF, AND TACKETT, JUDGES.

DYCHE, JUDGE: This appeal is brought on behalf of W. N., a juvenile, maintaining that his admission of guilt to the offense of Criminal Trespass, First Degree, was constitutionally invalid under Boykin v. Alabama, 395 U.S. 238 (1969). We have reviewed the entire record, and listened to the audiotape of the proceeding in juvenile court, and must agree.

In determining the validity of guilty pleas in criminal cases, the plea must represent a voluntary and intelligent choice among the alternative course([s]) of action open to the defendant. North Carolina v. Alford, 400 U. S. 25, 91 S.Ct. 160, 27

L.Ed.2d 162 (1970); Sparks v. Commonwealth, Ky. App., 721 S.W.2d 726 (1986). The United States Supreme Court has held that both federal and state courts must satisfy themselves that guilty pleas are voluntarily and intelligently made by competent defendants. Brady v. United States, 397 U.S. 742, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970). Since pleading guilty involves the waiver of several constitutional rights, including the privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one's accusers, a waiver of these rights cannot be presumed from a silent record. The court must question the accused to determine that he has a full understanding of what the plea connotes and of its consequences, and this determination should become part of the record. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 1712, 23 L.Ed.2d 274 (1969); Sparks, supra.

The validity of a guilty plea must be determined not from specific key words uttered at the time the plea was taken, but from considering the totality of circumstances surrounding the plea. Kotas v. Commonwealth, Ky., 565 S.W.2d 445, 447 (1978); Lynch v. Commonwealth, Ky. App., 610 S.W.2d 902 (1980); Sparks, supra. These circumstances include the accused's demeanor, background and experience, and whether the record reveals that the plea was voluntarily made. Sparks, supra.

Littlefield v. Commonwealth, Ky. App., 554 S.W.2d 872 (1977).

Centers v. Commonwealth, 799 S.W.2d 51, 54 (Ky. App. (1990)).

The record in the present case shows that under any test, the bare minimum for compliance with Boykin were not met. We are not unmindful that juvenile proceedings are by nature

less formal than adult proceedings;¹ and we are aware of the great number of cases most district judges handle. It is nevertheless necessary for plea proceedings to meet constitutional muster. This one most definitely does not. There was no colloquy whatsoever; only the question, "Is that right Mr. [N], you admit to the criminal trespass?"

The opinion of the Grant Circuit Court is reversed and this matter is remanded with instructions to vacate the adjudication and disposition in the juvenile court, and for further proceedings in that court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

Gregory D. Stumbo
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¹ We do not condone the use of vulgarity by the district judge, toward either his job or the juvenile.