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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000283-MR

JAMES R. HARRIS

APPELLANT

v. APPEAL FROM NELSON CIRCUIT COURT
HONORABLE CHARLES C. SIMMS, III, JUDGE
ACTION NO. 04-CR-00186

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: HENRY, JOHNSON, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: James R. Harris appeals from a judgment entered by the Nelson Circuit Court pursuant to a guilty plea. Appellant contends that the trial court abused its discretion in denying his motion to withdraw his guilty plea without holding a hearing, and erred in failing to have his competency evaluated and hold a competency hearing. We affirm.

On November 22, 2004, appellant pled guilty to operating a motor vehicle under the influence (fourth offense), operating a motor vehicle while license suspended, resisting

arrest, failure to wear a seatbelt, refusal to take an alcohol test, and being a first-degree persistent felony offender. At his January 6, 2005, sentencing hearing, appellant moved the court to withdraw his plea, on grounds that he had "been taking a bunch of sleeping pills." Appellant indicated that he had found the pills on the floor, and had begun taking them in December. The trial court determined that, because appellant had entered his plea in November, the pills should not have affected his ability to enter the plea. The trial court therefore denied the motion and sentenced appellant, in accordance with the plea agreement, to a total of ten years' imprisonment. This appeal followed.

Appellant presents two arguments on appeal - first, that the trial court erred in denying his request to withdraw his guilty plea without holding a hearing, and second, that the trial court erred in failing to have his competency evaluated and hold a hearing thereon. We shall address the competency argument first.

Appellant's case was set to go to trial on November 22, 2004. That morning, appellant's counsel moved for a continuance in order that appellant's competency be evaluated. Counsel explained that they had recently acquired the case, and had serious concerns about appellant's capacity to aid in his defense. The trial judge stated that he had reviewed

appellant's record, that appellant had a significant record and had been before the court on other occasions, and that he could not recall appellant's competency or ability to understand the proceedings having been questioned at any time. Therefore, the motion was denied. Appellant subsequently elected to change his plea to guilty, and the aforementioned guilty plea was entered.

Appellant contends that counsel's motion for a competency evaluation should have triggered the statutory provisions of KRS 504.100. We disagree. The provisions of KRS 504.100 are applicable where the trial court "has reasonable grounds to believe the defendant is incompetent to stand trial." KRS 504.100(1). "Reasonable grounds must be called to the attention of the trial court or must be so obvious that the trial judge cannot fail to be aware of them." Lear v. Commonwealth, 884 S.W.2d 657, 659 (Ky. 1994). Our standard of review as to a trial court's failure to hold a competency hearing is whether a reasonable judge in the same situation as the trial court should have experienced doubt regarding the defendant's competency to stand trial. Mills v. Commonwealth, 996 S.W.2d 473, 486 (Ky. 1999). In the present case, no grounds for doubting appellant's competency were presented, other than the general concern expressed by new counsel. The trial court, however, indicated that it was familiar with appellant's competency from prior proceedings. Subsequently, at the plea

hearing, counsel expressed the belief that appellant was entering his plea knowingly, voluntarily, and willingly. Further, based on the trial court's observations of appellant and his answers to questions during the plea hearing, the court again found appellant competent to enter a plea. A review of the plea hearing shows appellant rationally participating in, and demonstrating understanding of, the proceedings. We see no error. Mills, 996 S.W.2d at 486; Lear, 884 S.W.2d at 659.

We next address appellant's argument that the trial court erred in denying his request to withdraw his guilty plea without holding a hearing. RCr 8.10 provides that "[a]t any time before judgment the court may permit the plea of guilty . . . to be withdrawn and a plea of not guilty substituted." The standard of review of a trial court's denial of a motion to withdraw a guilty plea is as follows:

Once a criminal defendant has pleaded guilty, he may move the trial court to withdraw the guilty plea, pursuant to RCr 8.10. If the plea was involuntary, the motion to withdraw it must be granted. However, if it was voluntary, the trial court may, within its discretion, either grant or deny the motion. . . . The trial court's determination on whether the plea was voluntarily entered is reviewed under the clearly erroneous standard. A decision which is supported by substantial evidence is not clearly erroneous. If, however, the trial court determines that the guilty plea was entered voluntarily, then it may grant or deny the motion to withdraw the plea at its discretion. This decision is reviewed

under the abuse of discretion standard. A trial court abuses its discretion when it renders a decision which is arbitrary, unreasonable, unfair, or unsupported by legal principles.

Rigdon v. Commonwealth, 144 S.W.3d 283, 288 (Ky.App. 2004)

(citations omitted).

A guilty plea is valid if it represents a voluntary and intelligent choice to waive the several trial-related constitutional rights and the record affirmatively establishes this knowing waiver. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969); Centers v. Commonwealth, 799 S.W.2d 51, 54 (Ky.App. 1990). A review of the proceedings surrounding the guilty plea shows the necessary requirements of Boykin were met. Our review of the plea hearing shows that the trial court conducted an extensive colloquy with appellant to insure that appellant understood the plea agreement and the rights he was waiving by pleading guilty. With regard to the issue of appellant's mental health affecting the voluntariness of his plea, at the plea hearing appellant informed the court that he was taking medicine prescribed by a psychiatrist for his nerves. However, appellant further indicated that the medication did not interfere with his ability to know where he was or what he was doing. Appellant indicated that he had not been under the influence of drugs or alcohol in the past 48 hours. "The trial court is in the best position to determine if

there was any reluctance, misunderstanding, involuntariness, or incompetence to plead guilty." Centers, 799 S.W.2d at 54. The trial court found that, based on its observations of appellant, in conjunction with his answers to the court's questions, the statements from his counsel, and the execution of the plea documents, that appellant was entering his plea knowingly, voluntarily, and willingly. Having reviewed the record, we conclude the trial court's finding was supported by substantial evidence.

At the January 6, 2005, sentencing hearing, the only grounds presented for withdrawing the plea was that appellant had "been taking a bunch of sleeping pills." Upon further inquiry by the trial court, appellant indicated that he found the pills on the floor and had been taking them for two or three weeks. The trial court sought further clarification, asking appellant if he had started taking the pills in November, December, or January. Appellant responded that he had begun taking them in December. In light of this response, the trial court found that the voluntariness of appellant's plea would not have been affected, because the plea was taken in November. This finding is not clearly erroneous, and no further hearing was necessary. Having found that appellant's plea was entered voluntarily, our inquiry becomes whether the trial court abused its discretion in denying the motion to withdraw the plea. The

trial court's decision was not arbitrary, unreasonable, unfair, or unsupported by legal principles. Rigdon, 144 S.W.2d at 288. Accordingly, the trial court did not abuse its discretion in denying the motion.

For the aforementioned reasons, the judgment of the Nelson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Linda Roberts Horsman
Assistant Public Advocate
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General

Clint E. Watson
Assistant Attorney General
Frankfort, Kentucky