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NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-001540-MR

JASON GOLDSMITH

APPELLANT

v. APPEAL FROM BULLITT CIRCUIT COURT
HONORABLE THOMAS L. WALLER, JUDGE
ACTION NO. 04-CR-00269

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: COMBS, CHIEF JUDGE; GUIDUGLI AND HENRY, JUDGES.

COMBS, CHIEF JUDGE: Jason Goldsmith appeals from an order of the Bullitt Circuit Court that denied his motion to withdraw his plea of guilty to first-degree wanton endangerment and misdemeanor trafficking involved in marijuana charges. He argues that the trial court abused its discretion in denying the motion. As we disagree, we affirm the trial court.

Goldsmith was charged with first-degree wanton endangerment, trafficking in marijuana (less than eight ounces), and driving on a suspended or revoked operator's license.

Goldsmith held a .9 mm handgun to the head of a fourteen-year-old boy in an attempt to coerce information from the boy concerning the theft of several thousand dollars worth of illegal drugs from his car. He fled the scene after police were notified. When he was apprehended, he possessed the handgun, two bags of marijuana, and \$5,423.00 in cash. A grand jury returned an indictment against him on November 10, 2004; he entered his plea of guilty on March 3, 2005. Sentencing was set for April 27, 2005. Goldsmith was allowed to remain free on bond despite objection by the Commonwealth.

Several diverse incidents occurred between the time of his plea and his sentencing. Goldsmith was involved in a car accident. He was allegedly observed to have a shotgun in his bedroom. Believing that Goldsmith was suicidal, his father obtained a seventy-two-hour mental health commitment for him. After he failed to appear for his sentencing, a bench warrant was issued for his arrest. Goldsmith obtained new counsel, who filed motions to substitute as counsel and to withdraw Goldsmith's guilty plea. The trial court granted the motion for substitution and scheduled a hearing on the motion to withdraw the guilty plea.

At the hearing on June 13, 2005, Goldsmith called his father as his sole witness. His father testified that he was unaware that Goldsmith had intended to enter a guilty plea until

after it occurred. With regard to the accident, he testified that Goldsmith had been drinking prior to wrecking the car. He also reported that he had seen Goldsmith with a shotgun in his bedroom. His father described Goldsmith as "edgy" prior to his sentencing date. He was unable to testify that Goldsmith had actually attempted suicide or that he had ever spoken about killing himself.

The trial court entered an order denying the motion to withdraw the plea. It sentenced him on July 13, 2005 to serve two years on the wanton endangerment charge according to the terms of his plea agreement. He received a concurrent twelve-month sentence on the trafficking charge. This appeal followed.

Goldsmith argues that the trial court abused its discretion by refusing to allow him to withdraw his guilty plea prior to sentencing. RCr¹ 8.10, which governs the withdrawal of guilty pleas, provides as follows:

At any time before judgment the court may permit the plea of guilty or guilty but mentally ill, to be withdrawn and a plea of not guilty substituted.

If the court rejects the plea agreement, the court shall, on the record, inform the parties of this fact, advise the defendant personally in open court or, on a showing of good cause, in camera, that the court is not bound by the plea agreement, afford the defendant the opportunity to then withdraw the plea, and advise the defendant that if

¹ Kentucky Rules of Criminal Procedure.

the defendant persists in that guilty plea the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

The court can defer accepting or rejecting the plea agreement until there has been an opportunity to consider the presentence report.

Kentucky holds that "permission to withdraw a guilty plea and substitute a plea of not guilty is a matter within the sound discretion of the trial court." Anderson v. Commonwealth, 507 S.W.2d 187, 188 (Ky. 1974). At the time of his plea, Goldsmith was twenty-six years of age. He had graduated from high school and had been employed at various jobs. He reported no previous treatment for mental illness nor any impairment due to substances. The trial court conducted a thorough colloquy prior to accepting his guilty plea. Each of his constitutional rights was explained to him, and he stated that he understood them and wished to waive them by pleading guilty. He confirmed that he had conferred with his counsel and that he was satisfied with the representation he received. Goldsmith informed the trial court that he was voluntarily pleading guilty to the charges against him.

After discussing the elements of the plea with Goldsmith, the court asked his lawyer whether they had discussed the facts of the case, the nature of the charges and available defenses, and Goldsmith's rights. His lawyer answered in the

affirmative. The trial court then accepted his guilty plea, and Goldsmith received the exact sentence recommended by the Commonwealth. Thus, there was no mandatory right under RCr 8.10 entitling him to withdraw his plea.

Goldsmith now contends that the voluntariness of his plea is at issue because of his allegedly precarious mental state prior to his first scheduled sentencing date. We disagree. At the hearing on his motion to withdraw his plea, Goldsmith's new attorney conceded that the trial court's colloquy complied with the requirements of Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969), acknowledging that there was no evidence of a problem with his mental state until the day before he was scheduled for sentencing. Absent some evidence that Goldsmith did not understand his rights, the Commonwealth contended that the court had the discretion rather than an obligation to permit his plea to be withdrawn.

In denying Goldsmith's motion to withdraw his plea, the court found that it was knowing and voluntary. In addition, the court concluded that the hospital records submitted by Goldsmith failed to establish that he suffered from mental illness as he claimed. We cannot conclude the trial court abused its discretion in denying Goldsmith's motion to withdraw his guilty plea.

We affirm the judgment of the Bullitt Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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