

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-001742-MR

DAVID H. PRICE

APPELLANT

v.

APPEAL FROM BOYD CIRCUIT COURT
HONORABLE MARC I. ROSEN, JUDGE
ACTION NO. 04-CR-00163

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; WINE, JUDGE; PAISLEY,¹ SENIOR JUDGE.

WINE, JUDGE: David H. Price entered a conditional plea in the Boyd Circuit Court to operating a motor vehicle while his license was suspended for DUI, third offense, and to being a second-degree persistent felon. Price appeals the circuit court's denial of his motion to exclude a previous conviction that was used to enhance his sentence, alleging that his prior

¹ Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

guilty plea in district court was not knowing and voluntary. For the following reasons, we affirm.

Price challenges the trial court's use of his earlier guilty plea to operating a motor vehicle while on a DUI-suspended license, second offense, to enhance his current offense to a felony. On April 16, 2003, Price and a group of other defendants appeared before the Boyd District Court for arraignment. The district court apprised Price and the others, as a group, of their constitutional rights. Price first argues that the district court's practice of advising defendants of their constitutional rights as a group was not sufficient to inform him of the rights he would be waiving by pleading guilty. He suggests that the mere fact that there were a number of participants present at the arraignment created enough confusion at the time of his plea to make it invalid. We disagree.

In determining the validity of a guilty plea in a criminal case, the plea must represent a voluntary and intelligent choice among an alternative course 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, 721 S.W.2d 726 (Ky.App. 1986). 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, 565

S.W.2d 445, 447 (Ky. 1978). Although advising defendants of their rights as a group may not be the ideal situation, it was constitutionally sufficient in this case.

In its address to the assembled defendants, the district court explained that their rights included the privilege against compulsory self-incrimination, the right to an attorney, and the right to a trial by jury. The district court went on to explain that if one were to plead guilty, he or she would waive said constitutional rights. The district court also informed the defendants that the court would pass judgment and impose the applicable sentence immediately following any guilty plea. Price alleges that the district court did not inform him that he had the right to be free from compulsory self-incrimination. Price further argues that the district court's description informing him that he would waive his right to appeal upon pleading guilty was too generalized.

The record clearly refutes both contentions. The district court specifically stated Price and the others did not have to speak to the judge or say anything at all during the criminal proceeding. Likewise, the district court also explained that the participants had the constitutional right to appeal and informed them that all the proceedings of the day would be recorded to preserve for appeal. Price has put forth

no evidence to establish that he did not understand his rights when he entered his plea of guilty.

Price primarily argues that the district court erred when it refused to allow him to withdraw his guilty plea. The district court's decision to grant or deny a motion to withdraw a voluntary and knowing guilty plea will be reviewed for an abuse of discretion. Bronk v. Commonwealth, 58 S.W.3d 482 (Ky. 2001). A decision that is arbitrary, unreasonable, unfair or unsupported by legal principles is one where the trial court has abused its discretion. Goodyear Tire and Rubber Co. v. Thompson, 11 S.W.3d 575, 581 (Ky. 2000). Again, the record clearly refutes Price's allegation of error.

On the day of his arraignment, Price believed he had been charged with a felony. Only after some confusing discussion with the district judge about his prior convictions did Price learn that he was actually only being charged with a misdemeanor and he decided to enter a plea of guilty. When Price raised a question about a prior conviction, the district court suggested that Price could withdraw his guilty plea. But Price responded, "I'll leave my plea." (District Court Hearing 4/16/03 Transcript, p. 14). The district court accepted Price's plea of guilty, considered his prior criminal history, and sentenced him to serve the full six months in the Boyd County Detention Center.

After sentencing, Price expressed an interest in changing his plea to not guilty. The district court denied the motion, but informed Price that he could appeal the decision denying his motion to withdraw the plea of guilty. Price offers no explanation for his decision to forego an appeal from this ruling. Consequently, he is not entitled to challenge the validity of the guilty plea entered on April 16, 2003.

In conclusion, we find that Price's prior guilty plea was knowing and voluntary, and thus could properly be used to enhance his current offense. Accordingly, the judgment of conviction by the Boyd Circuit Court is affirmed.

ALL CONCUR.

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