

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000406-MR

L.D. WILLIAMS

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE GREGORY M. BARTLETT, JUDGE
ACTION NO. 05-CR-00252

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

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BEFORE: KELLER AND VANMETER, JUDGES; GUIDUGLI,¹ SENIOR JUDGE.

GUIDUGLI, SENIOR JUDGE: During the voir dire stage of his trial, L.D. Williams, through his attorney, decided to withdraw his not guilty plea and enter a guilty plea to three counts of trafficking in a controlled substance. Following a plea colloquy, the court accepted Williams's guilty plea. Shortly thereafter, Williams filed a motion to withdraw his guilty plea. The court denied the motion without an evidentiary hearing and sentenced

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

Williams to twelve years in prison. Williams appeals the circuit court's denial of his motion to withdraw his guilty plea. Having thoroughly reviewed this matter, we affirm.

Williams was indicted by the Kenton County Grand Jury on May 6, 2005, on three counts of trafficking in a controlled substance, first degree, second offense. He pled not guilty and requested a speedy trial. A trial was scheduled for August 25, 2005, but was continued until September 29, 2005. On September 23, 2005, an assistant Commonwealth attorney filed a motion to take the video deposition of the confidential informant (C.I.) used in the case due to the C.I.'s health problems. On September 28, 2005, the Commonwealth filed a motion requesting a continuance of the scheduled jury trial on September 29, 2005, because the C.I. was unavailable due to his health. The Commonwealth alleged in its motion that the C.I. was suffering from diabetes and had surgery to remove his foot. Upon the C.I.'s release from the hospital following three surgeries, the Commonwealth could not immediately locate the C.I. and therefore sought the continuance. The circuit court granted the motion to continue the jury trial, released Williams on an O.R. bond, and rescheduled the trial for December 1, 2005.

On November 23, 2005, Williams filed a motion to dismiss the indictment alleging prosecutorial misconduct. Williams argued in his motion that another criminal case involving the same C.I. had been dismissed upon the Commonwealth's motion due to the unavailability of the C.I. The Commonwealth responded by stating that the location of the C.I. was now known and that he would be available on the scheduled trial date. On December 1, 2005, Williams's trial on the three counts of trafficking began. During the

voir dire portion of the trial, the Commonwealth indicated that certain witnesses would be called to testify including the C.I. who was now identified as Wayne Lewis. As the Commonwealth's voir dire continued, Williams advised his attorney that he wished to plead guilty to the charges against him. The court allowed the Commonwealth to complete its voir dire, then took a recess and addressed Williams's request to plead guilty. The court conducted a thorough plea colloquy and thereafter accepted Williams's plea of guilty. Both Williams and his attorney signed a motion to enter the guilty plea acknowledging his constitutional rights, admitting his guilt, and declaring that the plea was freely, knowingly, intelligently, and voluntarily made.

Shortly thereafter, on December 12, 2005, Williams filed a pro se motion to “retract” his guilty plea. On December 14, 2005, Williams's attorney also filed a motion to withdraw the guilty plea indicating merely that Williams wished to speak to the court on this issue. At the sentencing hearing on January 9, 2006, the trial court addressed Williams's motion. Williams claimed that the confidential informant who allegedly purchased the drugs from him was not present in court on December 1, and had, in fact, died prior to the trial date. He argued that the plea was not made freely, voluntarily, and knowingly, therefore, the court should grant his motion to withdraw it.

During the hearing, Williams claimed that the C.I. was not present on the trial date and that the Commonwealth presented a “false witness” that was not Wayne Lewis to his attorney. Williams alleged that a man named Wayne Lewis had been killed in Cincinnati, Ohio, prior to the trial. The Commonwealth responded that the C.I., Wayne

Lewis, was present on the trial date and was ready, willing, and able to testify against Williams. Defense counsel admitted that he had seen an individual identified by the Commonwealth as the C.I. However, he also stated that after the trial when he described Lewis, Williams claimed that it was not Lewis who was present. Williams presented nothing to the court to confirm his belief that Lewis was dead or that he was not present on the trial date.

The trial court took another approach by stating that it did not matter if the C.I. was present on the trial date. The court stated that Williams withdrew his not guilty plea and entered a plea freely, knowingly, and voluntarily. The trial court emphasized the thoroughness of the plea colloquy and the fact that Williams admitted his guilt. Based upon the lack of any evidence that the C.I. was not present on the trial date and Williams's admission of his guilt to all three trafficking charges, the trial court denied the motion to withdraw his plea and sentenced Williams to twelve (12) years' imprisonment. This appeal followed.

On appeal, Williams contends that he was entitled to an evidentiary hearing to determine whether or not his plea was knowing, intelligent, and voluntary. He argues that the trial court abused its discretion in denying the motion without a hearing. Prior to the jury trial, Williams's attorney notified him that the C.I. was present and would testify. During the voir dire, the Commonwealth introduced its witnesses including Lewis. At this point, Williams informed the court that he wished to change his plea and enter a guilty plea to all charges. During the plea colloquy, defense counsel informed the court

that the availability of the C.I. was an issue in the case. At this point, defense counsel informed the court that he had seen the C.I. in the conference room and the Commonwealth stated that the C.I. “is here and willing, ready, and able to testify.” The court then went through a thorough plea colloquy with Williams and his attorney culminating in Williams's admission that he sold cocaine on three separate occasions. The court accepted Williams's plea of guilty and dismissed the jury. One of the reasons Williams was not released on bond pending final sentencing was the Commonwealth's concern as to the well being of the C.I. who was now identified and who had been present to testify against Williams. Williams never expressed any concerns that the C.I. was not available and ready to testify against him at that time.

Several days after entering the guilty pleas, Williams filed his motion to “retract” his plea. He claimed that the C.I. was dead, but provided the court with no verification of his belief. The final sentencing and hearing on his motion was set over one month after his plea was entered. At that hearing, Williams again provided no proof of his belief that the C.I. was not present at the trial or had died. Both defense counsel and the Commonwealth restated that the C.I. had been present at the jury trial.

The standard of review of a trial court's decision regarding the voluntariness of a guilty plea is under a clearly erroneous standard. *Rigdon v. Commonwealth*, 144 S.W.3d 283, 288 (Ky. 2004). Additionally, this Court's review of a trial court's decision to deny a motion to withdraw a plea which it has determined was voluntarily made, is under an abuse of discretion standard. *Id.* A ruling that is supported by substantial

evidence is not clearly erroneous. *Id.* A trial court abuses its discretion only when it acts arbitrarily, unreasonably, unfairly, or outside of sound legal principles. *Id.* A thorough review of the record in this case clearly reveals that the trial court's decision to accept Williams's guilty plea and to deny his motion to withdraw the plea was neither clearly erroneous nor an abuse of discretion. While Williams may have had second thoughts after he entered his guilty plea, he had no legal or factual basis which would require the trial court to permit such action. RCr 8.10 states that at “any time before judgment the court **may** permit the plea of guilty . . . to be withdrawn and a plea of not guilty substituted (emphasis added). In this case, Williams entered his plea freely, knowingly, and voluntarily as can be seen from the record. Williams presented no credible evidence that the C.I. was not present during his jury trial. His contention that the Commonwealth either lied to him or tricked him by presenting a “false witness” is not credible. Despite Williams's allegation to the contrary, he entered a valid guilty plea and the trial court did not err in enforcing the plea and sentencing him to the bargained for twelve years.

For the foregoing reasons, the Kenton Circuit Court's order denying Williams's motion to withdraw the guilty plea is affirmed.

ALL CONCUR.

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