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(FILE NO. 2007-SC-0731-D)

Commonwealth of Kentucky
Court of Appeals

NO. 2006-CA-000587-MR

CHARLES DENTON — APPELLANT

v.

APPEAL FROM JESSAMINE CIRCUIT COURT
HONORABLE C. HUNTER DAUGHERTY, JUDGE
ACTION NO. 01-CR-00016

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION AND ORDER
(1) DENYING MOTION TO STRIKE APPELLEE'S BRIEF;
(2) AFFIRMING

** ** ** ** **

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

VANMETER, JUDGE: As a general rule, a voluntary guilty plea which was intelligently made in light of the applicable law at the time of the plea waives all defenses and is binding on a defendant. In this case, appellant Charles Denton pleaded guilty and was sentenced to life without the possibility of parole for twenty-five years in accordance

[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 Kentucky Revised Statutes (KRS) 21.580.

with the terms of a plea agreement. The issue we must address is whether the circuit court erred by denying Denton's motion for a new sentencing hearing in light of a subsequent ruling by the United States Supreme Court which excluded juveniles from eligibility for the death penalty. Finding no error, we affirm.

On January 31, 2001, seventeen-year-old Denton was indicted as an adult on one count each of capital murder and robbery first degree. In order to avoid the possibility of receiving the death penalty, Denton entered a guilty plea to the charges on November 5, 2001, after confirming that he knew his age would be a mitigating factor if the case went to trial. The circuit court followed the Commonwealth's recommendation and on December 7, 2001, sentenced Denton to life without the possibility of parole for twenty-five years for the murder charge and twenty years for the robbery charge, to run concurrently. The trial court's denial of Denton's subsequent motion seeking RCr[2] 11.42 relief was affirmed by this court on appeal.[3]

The United States Supreme Court then held in *Roper v. Simmons,* 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005), that the execution of persons who were under the age of eighteen at the time of their offenses is unconstitutional as prohibited by the Eighth and Fourteenth Amendments to the United States Constitution. Denton therefore submitted a motion requesting a new sentencing hearing pursuant to CR[4] 60.02(e) and (f), and RCr 11.42, arguing that the circuit court denied his constitutional rights when sentencing him by failing to give full and sufficient consideration to the characteristics of adolescent brain development relating to culpability. However, the court denied this

[2] Kentucky Rules of Criminal Procedure.

[3] *Denton v. Commonwealth,* 2002-CA-001042-MR (Ky.App. Jan. 30, 2004).

[4] Kentucky Rules of Civil Procedure.

motion without a hearing, concluding that the culpability factors associated with youthful immaturity are recognized throughout the law and were considered at sentencing. *See* KRS 532.025(2)(b). The circuit court denied Denton's motion on the ground that *Roper* is inapplicable to juvenile offenders who are not sentenced to death. Denton appeals.

Denton argues that the trial court erred by failing to conduct a new sentencing hearing in light of *Roper*'s findings concerning the diminished culpability of juveniles and the unconstitutionality of sentencing a juvenile to the death penalty. Denton contends that because his sentencing preceded *Roper*, the circuit court was not fully aware of the relationship between adolescent brain development and culpability, and was thus unable during sentencing to give full and sufficient consideration to the constitutional import of adolescent brain development. We disagree.

As a general rule, a voluntary and intelligent guilty plea waives all defenses and, if "made in the light of the then applicable law[, it] does not become vulnerable because later judicial decisions indicate that the plea rested on a faulty premise." *Brady v. United States*, 397 U.S. 742, 757, 90 S.Ct. 1463, 1473, 25 L.Ed.2d 747 (1970). As recognized in *Brady*, a mutuality of advantage exists for both parties to a plea bargain:

> For a defendant who sees slight possibility of acquittal, the advantages of pleading guilty and limiting the probable penalty are obvious—his exposure is reduced, the correctional processes can begin immediately, and the practical burdens of a trial are eliminated. For the State there are also advantages—the more promptly imposed punishment after an admission of guilt may more effectively attain the objectives of punishment; and with the avoidance of trial, scarce judicial and prosecutorial resources are conserved for those cases in which there is a substantial issue of the defendant's guilt or in which there is substantial doubt that the State can sustain its burden of proof.

397 U.S. at 752, 90 S.Ct. at 1471. Concluding that "a plea of guilty is not invalid merely because entered to avoid the possibility of a death penalty[,]" 397 U.S. at 755, 90 S.Ct. at 1472, the Court found "no requirement in the Constitution that a defendant must be permitted to disown his solemn admissions in open court that he committed the act with which he is charged simply because it later develops . . . that the maximum penalty then assumed applicable has been held inapplicable in subsequent judicial decisions." 397 U.S. at 757, 90 S.Ct. at 1474.

Thus, a subsequent interpretation of the law which renders an earlier plea agreement less favorable to a defendant does not entitle the defendant to a new sentencing hearing, as "[p]lea agreements, the Supreme Court has long instructed, may waive constitutional or statutory rights then in existence as well as those that courts may recognize in the future." *United States v. Bradley*, 400 F.3d 459, 463 (6th Cir. 2005). Further, the Supreme Court "has explained that where developments in the law later expand a right that a defendant has waived in a plea agreement, the change in law does not suddenly make the plea agreement involuntary or unknowing or otherwise undo its binding nature." *Id.* Indeed, although Denton argues that he was deprived of the benefit of his bargain through no fault of his own, that argument must fail since, as noted in *Bradley*,

> [p]lea bargains always entail risks for the parties—risks relating to what evidence would or would not have been admitted at trial, risks relating to how the jury would have assessed the evidence and **risks relating to future developments in the law**. The salient point is that a plea agreement allocates risk between the two parties as they see fit. If courts disturb the parties' allocation of risk in an agreement, they threaten to damage the parties' ability to ascertain their legal rights when they sit down at the bargaining table and, more problematically for criminal defendants, they threaten to reduce the likelihood that

> prosecutors will bargain away counts (as the prosecutors did here) with the knowledge that the agreement will be immune from challenge on appeal. *See Young v. United States,* 124 F.3d 794, 798 (7th Cir. 1997) ("If the law allowed the defendant to get off scot free in the event the argument later is shown to be a winner, then the defendant could not get the reduction in the first place. Every plea would become a *conditional* plea, with the (unstated) condition that the defendant obtains the benefit of favorable legal developments, while the prosecutor is stuck with the original bargain no matter what happens later. That approach destroys the bargain, and the prospect of such an outcome will increase the original sentence.").

Id. at 464-465 (first emphasis added).

Here, this court has already determined that Denton entered his plea knowingly and voluntarily. *Denton v. Commonwealth,* 2002-CA-001042-MR (Ky.App. Jan. 30, 2004). In any event, Denton received a benefit since at the time of his plea, KRS 532.030 permitted five possible sentences for a capital offense: (1) the death penalty; (2) imprisonment for life without the benefit of probation or parole; (3) imprisonment for life without the benefit of probation or parole for a minimum of twenty-five years; (4) life imprisonment; or (5) a term of twenty to fifty years. Even after eliminating the death penalty as a possible punishment, Denton benefited by avoiding the possible imposition of a sentence of life without the benefit of probation or parole, not to mention that his twenty-year sentence for robbery first degree was ordered to run concurrently.

Next, Denton's argument that a contract analysis should be applied is unfounded. Although a "plea agreement in a criminal case is a contract[,]" *Hensley v. Commonwealth*, 217 S.W.3d 885, 886 (Ky.App. 2007), a contract analysis primarily applies only to the breach of a plea agreement. The doctrine of frustration of purpose, which Denton seeks to apply, has no place in a criminal case. Moreover, aside from the

fact that RCr 11.42(3) bars successive claims for RCr 11.42 relief, the claims raised in that motion in fact have been addressed above.

Finally, Denton moved to strike a portion of the Commonwealth's brief for citation to a nonfinal opinion. That motion was passed to this panel for consideration. While citation to such an opinion is improper, the remedy of striking a brief is not always warranted. *See, e.g., Baker v. Jones*, 199 S.W.3d 749, 753 (Ky.App. 2006). That rule is especially true in this instance since the case cited is not relevant to our decision. Denton's motion to strike is therefore denied.

The court ORDERS that Denton's motion to strike a portion of the Commonwealth's brief be, and is hereby, DENIED. Further, the circuit court's order is affirmed.

ALL CONCUR.

Entered: August 3, 2007

/s/ Laurance B. VanMeter
JUDGE, COURT OF APPEALS

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