

Commonwealth Of Kentucky
Court of Appeals

NO. 2006-CA-001491-MR

MARIO H. MITCHELL

APPELLANT

v. APPEAL FROM HENDERSON CIRCUIT COURT
HONORABLE STEPHEN A. HAYDEN, JUDGE
ACTION NO. 05-CR-00305

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, CHIEF JUDGE; CAPERTON AND MOORE, JUDGES.

CAPERTON, JUDGE: Mario H. Mitchell appeals from a Judgment of the Henderson Circuit Court entered June 21, 2006, finding him guilty of three (3) counts of Second Degree Sodomy. Mario H. Mitchell (Mitchell) alleges the Henderson Circuit Court committed error by failing to allow Mitchell to withdraw his guilty plea as involuntary pursuant to RCr 8.10. On appeal, we find no error and affirm the judgment of the Henderson Circuit Court.

On September 6, 2005, Mitchell was indicted in Henderson Circuit Court on three (3) counts of First Degree Sodomy. Hon. Greg Sutton of the Department of Public Advocacy was appointed to represent Mitchell and did so through the taking of the plea of guilty by the court. In representing Mitchell, the Hon. Greg Sutton moved the court to have Mitchell examined by the Kentucky Correctional Psychiatric Center (KCPC) to determine his competency to stand trial and assist in his own defense. Mitchell was examined and a report of examination was provided by Dr. Frank H. DeLand, staff psychiatrist at KCPC, indicating that Mitchell was competent to stand trial. See KRS 504.100 and RCr 8.06.

On April, 6, 2006, Mitchell appeared in Henderson Circuit Court and entered a plea based on the recommendation of the Commonwealth to three (3) counts of Sodomy Second Degree, as amended. Prior to entry of the plea, the court inquired into the competency of Mitchell by reviewing the report of Dr. DeLand. The report was admitted and filed of record absent objection by Hon. Greg Sutton, counsel for Mitchell. Further, Mitchell offered no evidence on the issue of competency. Based on the report the court found Mitchell competent to enter a plea or stand trial. Thereafter, the court placed Mitchell under oath, engaged in a lengthy colloquy, and accepted Mitchell's plea of guilty to three (3) counts of Sodomy Second Degree as made knowingly and voluntarily.

On June 5, 2006, the Hon. Greg Sutton withdrew as counsel for Mitchell. On June 13, 2006, Hon. John Austin filed a motion on behalf of Mitchell seeking to withdraw Mitchell's guilty plea. The court overruled Mitchell's motion to withdraw guilty plea by order entered June 30, 2006. This appeal followed.

Mitchell argues his plea must be found by the court to be voluntary pursuant to CR 8.08. We agree. Mitchell argues that he is entitled to withdraw his guilty plea prior to sentencing *at the discretion* of the court pursuant to RCr 8.10. We agree.

Mitchell further argues the trial court abused its discretion by overruling the motion to withdraw his guilty plea pursuant to RCr 8.10. More particularly, the basis of Mitchell's RCr 8.10 argument was the court's conduct of a competency hearing following an evaluation of Mitchell pursuant to KRS 504.100.

The trial court is under an obligation pursuant to KRS 504.100 to have a defendant's mental condition examined by a psychologist or psychiatrist if there are reasonable grounds to believe such defendant is incompetent to stand trial. Mitchell underwent such an examination based on an agreed order entered by the court on November 20, 2005. The record is devoid of any facts to support such an examination other than the motion for ex parte funds to pay for the examination and the agreed order of examination. Nevertheless, such examination was performed.

KRS 504.100 further requires the court to hold a hearing after the filing of the report(s) for a determination of whether defendant is competent. The case of *Matthews v. Commonwealth*, 468 S.W.2d 313 (Ky 1971) states:

A hearing for the purpose of determining the mental capacity of a defendant is required under this rule [RCr 8.06 which cites KRS 504.100] only in a situation where there are reasonable grounds to believe that the defendant is insane. The reasonable grounds for such belief must be called to the attention of the trial court by the defendant or must be so obvious that the trial court cannot fail to be aware of them. *Id.* at 314.

"The trial court has a broad discretion in determining whether a defendant has the ability to participate rationally in his defense," *Hopewell v. Commonwealth*, 641 S.W.2d 744, 748 (Ky 1982), and as such the standard of review is abuse of discretion. *Id.* "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

The court called the matter for hearing, the Commonwealth offered the report of a staff psychiatrist at KCPC, Dr. Frank H. Deland, which found Mitchell competent to stand trial. The report was admitted into evidence and entered of record without objection by Mitchell. Mitchell offered no evidence. Certainly the court is under no obligation to demand that Mitchell produce evidence on his own behalf nor, under the

aforementioned facts,¹ to adduce evidence on behalf of Mitchell. The hearing was called, the opportunity presented to the parties and the findings made by the court. Thus, a hearing was held. The finding by the trial court that Mitchell was competent to stand trial was commensurate with the applicable law and properly within the discretion of the court; no abuse of discretion occurred.

As to the trial court's ruling on Mitchell's motion pursuant to RCr 8.10 to withdraw his guilty plea, there being no abuse of discretion by the trial court in finding Mitchell to be competent, there was no abuse of discretion in the denial of said motion.

We find the requirements of RCr 8.06 and KRS 504.100 to have been met and no abuse of discretion by the Hon. Steve Hayden, Judge of the Henderson Circuit Court, in overruling Mitchell's motion to withdraw guilty plea pursuant to RCr 8.10 and, therefore, affirm the judgment.

ALL CONCUR.

¹ The record is devoid of any facts supporting a competency hearing other than a motion for funds to pay for an examination and an agreed order of examination.

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