

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2007-CA-000208-MR

RALPH E. BRUMAGEN

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE PAMELA R. GOODWINE, JUDGE  
INDICTMENT NO. 01-CR-00898

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CAPERTON, LAMBERT, AND THOMPSON, JUDGES.

LAMBERT, JUDGE: Ralph Brumagen appeals the denial of his CR 60.02 motion, in which he asserts that he was prejudicially sentenced due to a multiplicity of indictments. After careful review, we affirm.

In August 2001, Brumagen was indicted on one count of sodomy in the first degree and eight counts of sexual abuse in the first degree. The indictment alleged deviate sexual intercourse with one minor victim and sexual contact by forcible compulsion with three minor victims.

On March 26, 2002, Brumagen filed a petition to waive further proceedings and to enter a guilty plea. Pursuant to the plea agreement, Brumagen pled guilty to an amended charge of sodomy in the third degree and three counts of sexual abuse in the first degree. The agreement recommended a sentence of five years for each count for a maximum possible penalty of twenty years. After questioning Brumagen and his counsel at the guilty plea hearing, the trial court determined that the plea was knowingly, intelligently, and voluntarily entered and accepted the plea. Brumagen was subsequently sentenced to twenty years.

Brumagen filed a notice of appeal on October 28, 2003, and was allowed to proceed *in forma pauperis*. On September 9, 2004, however, an order was entered by this Court dismissing the appeal for failure by Brumagen to file a brief. Then three years and seven months after his guilty plea, on November 3, 2006, Brumagen filed a motion to vacate, correct, or set aside sentence pursuant to CR 60.02(f). After careful review, the Fayette Circuit Court entered an order denying Brumagen's claim, noting that by knowingly, willingly, voluntarily, and understandingly entering a guilty plea, Brumagen "waived his right to any evidentiary or procedural challenges." This appeal followed.

We review a trial court's ruling denying a 60.02 motion for an abuse of discretion. See *Barnett v. Commonwealth*, 979 S.W.2d 98, 102 (Ky. 1998); *Brown v. Commonwealth*, 932 S.W.2d 359, 362 (Ky. 1996); *White v. Commonwealth*, 325 S.W.3d 83

(Ky.App. 2000). For a trial court to have abused its discretion, its decision must have been arbitrary, unreasonable, unfair, or unsupported by sound legal principles. *Clark v. Commonwealth*, 223 S.W.3d 90, 95 (Ky.2007).

The effect of entering a voluntary guilty plea is to waive all defenses other than that the indictment charges no offense. *Thompson v. Commonwealth*, 147 S.W.3d 22 (Ky. 2004); *Quarles v. Commonwealth*, 456 S.W.2d 693 (Ky. 1970). Moreover,

Entry of a voluntary, intelligent plea of guilty has long been held by Kentucky Courts to preclude a post-judgment challenge to the sufficiency of the evidence. *E.g. King v. Commonwealth*, 408 S.W.2d 622, 623 (Ky. 1966); *Harris v. Commonwealth*, 441 S.W.2d 143 (Ky. 1969); *Bartley v. Commonwealth*, 463 S.W.2d 321 (Ky. 1971). The reasoning behind such a conclusion is obvious. A defendant who elects to unconditionally plead guilty admits the factual accuracy of the various elements of the offenses with which he is charged. . . . To permit a convicted defendant to do so would result in a double benefit in that defendants who elect to plead guilty would receive the benefit of the plea bargain which ordinarily precedes such a plea along with the advantage of later challenging the sentence resulting from the plea on grounds normally arising in the very trial which defendant elected to forego.

*Taylor v. Commonwealth*, 724 S.W.2d 223, 225 (Ky.App. 1986).

Brumagen was fully aware of all the charges and the possible range of his sentence when he entered his guilty plea. Additionally, he was allowed to benefit from an amended charge pursuant to his entry of a guilty plea. We accordingly find

that the trial court did not abuse its discretion in finding Brumagen waived his claims regarding the multiplicity of the indictment and the duration of his sentencing.

The judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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