

Commonwealth Of Kentucky
Court of Appeals

NO. 2007-CA-000693-MR

DARCY PERKINS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE SUSAN S. GIBSON, JUDGE
ACTION NO. 06-CR-000348

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: LAMBERT AND VANMETER, JUDGES; KNOPF,¹ SENIOR JUDGE.

KNOPF, SENIOR JUDGE: Darcy Perkins appeals a judgment of the Jefferson Circuit Court's denying his motion to withdraw his *Alford* plea. For the reasons stated below, we affirm.

On January 30, 2006, a Jefferson County grand jury indicted Perkins, along with several other individuals, of criminal syndication by engaging in organized crime, conspiracy to trafficking in marijuana (five pounds or more), and trafficking in marijuana (five pounds or more) in connection

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

with alleged crimes committed in December, 2005. On December 15, 2006, Perkins entered an *Alford* plea to conspiracy to trafficking in marijuana schedule I hallucinogen (five pounds or more) and complicity to trafficking in marijuana schedule I hallucinogen (five pounds or more). Perkins made a motion to withdraw his plea on January 18, 2007. A hearing was conducted by the trial judge concerning the motion to withdraw on February 5, 2007. Perkins' motion was denied by an order entered on February 19, 2007, after the trial court concluded that the pleas were knowing, voluntary, and intelligent. Perkins was sentenced to ten years' imprisonment in conformity with the plea agreement on February 26, 2007 and entered on March 2, 2007. This appeal followed.

Perkins argues that the trial judge erred by refusing to permit him to withdraw his *Alford* plea. RCr 8.10 provides "[a]t any time before judgment the court may permit the plea of guilty or guilty but mentally ill, to be withdrawn and a plea of not guilty substituted." "However, the word 'may' in RCr 8.10 does not give a trial judge unfettered discretion to deny a motion to withdraw a guilty plea without affording the defendant a hearing on the motion." *Rodriguez v. Commonwealth*, 87 S.W.3d 8, 10 (Ky. 2002).

Further, "[Kentucky] case law is clear that the discretion to deny a motion to withdraw a guilty plea exists

only after a determination has been made that the plea was voluntary." *Id.*; see *Haight v. Commonwealth*, 760 S.W.2d 84, 88 (Ky. 1988). This standard was established in the case of *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709 (1969), in which the United States Supreme Court held that in order for a guilty plea to be valid, it must be knowing, intelligent and voluntary. The holding in *Boykin* was adopted by the Kentucky Supreme Court in *Haight*.

The standard of review for a motion to withdraw a guilty plea is for abuse of discretion. *Rigdon v. Commonwealth*, 144 S.W.3d 283, 288 (Ky. App. 2004). "A trial court abuses its discretion when it renders a decision which is arbitrary, unreasonable, unfair, or unsupported by legal principles." *Id.*

In this case, a hearing was granted by the trial court on Perkins' motion to withdraw to determine if his plea was knowing, intelligent and voluntary. The trial court reviewed Perkins' guilty plea colloquy and entered a thorough order that determined that the plea entered by Perkins was knowing, intelligent and voluntary. The lower court found that Perkins fully understood the concept of an *Alford* plea and was not agitated nor under duress during his colloquy, nor did Perkins, at any time during his colloquy, mention any of the concerns that are the basis of his motion to withdraw his plea, which were concerns he apparently knew of before he entered the *Alford* plea. Since a hearing was conducted on the issue of the voluntariness of Perkins' plea and the colloquy complied with

the mandates of *Boykin v. Alabama*, we find no abuse of discretion by the trial court.

The judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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