

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-003305-MR

MAURICE WHITFIELD

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE WILLIAM E. McANULTY, JR., JUDGE
ACTION NO. 97-CR-0944

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: KNOPF, KNOX, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: This is an appeal from a judgment of conviction entered pursuant to a plea agreement. The appellant argues that the trial court erred in refusing to consider probation. Upon review of the record, it appears that the judge did consider probation and, thus, appellant's argument is without merit. Accordingly, we affirm.

On August 11, 1997, appellant, Maurice Whitfield, entered a plea of guilty to three counts of first-degree robbery and two counts of first-degree wanton endangerment pursuant to a plea bargain. In exchange for pleading guilty to the above charges, the Commonwealth agreed to recommend a sentence of ten

(10) years on each count of robbery and five (5) years on each count of wanton endangerment, to run concurrently, for a total of ten (10) years. The plea agreement specifically stated, "all counts concurrent for 10 years to serve." At the final sentencing on December 9, 1997, defense counsel urged the court to consider probation under KRS Chapter 640. The trial court stated that the language in the plea agreement "10 years to serve" precluded him from considering probation because the appellant had thereby agreed to serve all ten years. However, in the judgment on conviction entered on December 11, 1997, the court specifically considered probation and found that appellant was ineligible for probation for the following reasons: the substantial risk that appellant would commit another crime during the period of probation; the appellant is in need of correctional treatment that can be provided most effectively by the appellant's commitment to a correctional institute; and probation would unduly depreciate the seriousness of the appellant's crime. From the judgment denying probation and sentencing appellant to ten (10) years' imprisonment, appellant now appeals.

Appellant argues that, under KRS 533.010(1), the trial court erred when it refused to consider probation and that the language in the plea agreement "10 years to serve" was not a waiver of the statutory right to probation. In this case, we need not address the issue of whether the appellant could waive his right to consideration of probation because, despite the court's statement at the sentencing hearing, it is clear that the court did consider probation in entering its judgment. To

demonstrate compliance with KRS 533.010, the court need only place in the record a statement sufficient to show that the necessary consideration of probation has been given. Bell v. Commonwealth, Ky. App., 566 S.W.2d 785 (1978). The language in the court's judgment in this case was sufficient to demonstrate compliance with KRS 533.010. Thus, appellant's argument has no merit.

For the reasons stated above, the judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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