RENDERED: July 16, 1999; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-001226-MR

COREY TOOGOOD — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS KNOPF, JUDGE
ACTION NO. 97-CR-01780

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: DYCHE, MCANULTY, AND MILLER, JUDGES.

MILLER, JUDGE: Corey Toogood brings this *pro se* appeal from an April 23, 1998, order of the Jefferson Circuit Court. We affirm.

On November 19, 1997, appellant pled guilty to a charge of flagrant non-support. Ky. Rev. Stat. (KRS) 530.050. He was sentenced to one year imprisonment to run consecutively with a previous five year sentence, for a total of six years. Following sentencing, appellant informed the circuit court that he intended to file a motion seeking blood tests to determine paternity of the child in question. On December 1, 1997, appellant, Rasian LaShawn Snardan (the child), and Shanneitha Snardan (child's

mother) were ordered by the Jefferson Circuit Court to undergo such blood tests. The order stated that the tests were to be completed no later than January 5, 1998. The blood tests, however, were never performed. We are not advised as to which of the parties did not submit to the blood tests, nor as to why. On April 16, 1998, appellant filed a "Motion to Dismiss for Failure to Comply with this Hon. Court"s [sic] Order Dated 12/011997 [sic]." On April 23, 1998, appellant's motion to dismiss was denied by the circuit court.

Appellant contends he is entitled to a "dismissal" of his flagrant non-support conviction because his guilty plea was contingent upon a verbal agreement entered between himself, his counsel, the Commonwealth's Attorney, and the judge. Appellant claims the alleged agreement was that certain blood tests would be ordered, and, if he was found not to be the subject child's biological father then the conviction would be vacated. Appellant argues that since the ordered blood tests were never performed, the flagrant non-support conviction should be dismissed pursuant to the plea agreement. In essence, appellant is asserting a factual defense to a charge of which he has already pled guilty. It is a well-established rule of law that pleading guilty unconditionally waives all defenses except that the indictment did not charge an offense. See Hughes v. Commonwealth, Ky., 875 S.W.2d 99 (1994). In the case *sub judice,* appellant pled guilty to an indictment that charged an offense. The record makes no mention of an agreement whereby appellant's guilty plea was conditioned upon the results of an ordered blood

test. Neither the Commonwealth's Offer on a Plea of Guilty, nor appellant's Motion to Enter Guilty Plea mention such a condition in any way. Furthermore, when asked by the circuit court judge if appellant had been promised anything other than that which was mentioned in the Commonwealth's offer, appellant responded, "No sir." Appellant's sole contention is that since the court-ordered blood tests have not been performed, then his conviction should be dismissed. We view this contention, however, as merely an assertion of a factual defense waived by appellant's unconditional guilty plea. As such, we are of the opinion that appellant's contention is not supported by the record and that the circuit court did not err by denying appellant's motion.

For the foregoing reasons, the order of the circuit court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Corey D. Toogood, *pro se*
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BRIEF FOR APPELLEE:

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