

RENDERED: September 3, 1999; 2:00 p.m.
NOT TO BE PUBLISHED
MODIFIED: September 17, 1999; 2:00 p.m.

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-001163-MR

DARRELL SCOTT

APPELLANT

v. APPEAL FROM BARREN CIRCUIT COURT
HONORABLE BENJAMIN DICKINSON, JUDGE
ACTION NO. 98-CR-00021

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: DYCHE, GUIDUGLI AND JOHNSON, JUDGES.

GUIDUGLI, JUDGE. Darrell D. Scott (Scott) appeals from a final judgment and sentence of confinement entered by the Barren Circuit Court on April 30, 1998, which found him guilty of three counts of complicity to second-degree criminal possession of a forged instrument and one count of second-degree unlawful transaction with a minor and sentenced him to two years' imprisonment.¹ We affirm.

During his arraignment on the charges against him, Scott entered a plea of not guilty and a pre-trial conference was

¹Scott's appellate brief was submitted pursuant to Anders v. California, 386 U.S. 739, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967).

scheduled for March 16, 1998. On the date of the pre-trial conference, Scott appeared and tendered a motion to enter a guilty plea. The Commonwealth also tendered an offer on a plea of guilty. Both parties agree that the trial court then proceeded to question Scott to determine whether his plea was competent and voluntary. When asked by the trial court whether he had committed the acts he was charged with, Scott admitted that he had. The trial court found Scott's plea to be voluntary and competent, accepted Scott's plea, and set final sentencing for April 22, 1998.

Scott appeared before the trial court for sentencing on the appointed date. Scott made no changes to the PSI report and made no other requests regarding his guilty plea. The trial court sentenced Scott to a total of two years in prison on all the charges against him.

On May 4, 1998, Scott filed a motion with the trial court seeking to withdraw his guilty plea. The sole ground asserted by Scott in his motion was that he was not guilty of the charges against him. On May 5, 1998, the trial court denied the motion, stating, "[b]ased upon the defendant's responses to the Court's questions the Court determines that the defendant was competent and that his plea was made voluntarily." This appeal followed.

Scott's sole argument on appeal is that the trial court erred in refusing to allow him to withdraw his guilty plea. In support of his argument, Scott maintains that fundamental fairness requires that the trial court's denial of his motion be

reversed. Absent an abuse of discretion on behalf of the trial court, we will not reverse a trial court's refusal to allow a withdrawal of a guilty plea. Anderson v. Commonwealth, Ky., 507 S.W.2d 187, 188 (1974). Furthermore, under RCr 8.10, it has been held that a trial court should not allow a guilty plea to be withdrawn after sentencing has occurred unless it is shown that the guilty plea was either unwilling or made under fear, conceit, or coercion. Allee v. Commonwealth, Ky., 454 S.W.2d 336, 341 (1970).

The record in this case shows that the trial court conducted its own investigation into Scott's decision to plead guilty and found it to be both competently made and voluntary. Scott does not question these findings on appeal, nor does he make any assertion that he was not sentenced in accordance with his agreement with the Commonwealth. Thus, he has not shown that he is entitled to the relief he seeks.

Furthermore, as the Commonwealth points out, entry of a valid plea of guilt results in the waiver of all defenses except for that of failure of the indictment to charge a public offense. Bush v. Commonwealth, Ky., 702 S.W.2d 46, 48 (1986).

Additionally, by pleading guilty Scott admitted the factual accuracy of the elements of the offenses for which he was indicted. Skeans v. Commonwealth, 912 S.W.2d 455, 456 (1995).

While our ruling may appear to be harsh in light of Scott's protestations of innocence, it is entirely reasonable under RCr 8.10. Scott had from March 16, 1998 to April 27, 1998, to freely withdraw his guilty plea in favor of a trial. He

failed to do so. Having waited until after sentencing to withdraw his plea, Scott must now show something besides his alleged innocence to receive the relief he seeks. "[A] plea of guilty fairly made cannot be withdrawn after verdict merely on the whim or caprice of the defendant, or because the verdict was more severe than he had anticipated." Reed v. Commonwealth, Ky., 261 S.W.2d 630, 631 (1953).

Having considered the parties' arguments on appeal, the judgment of the Barren Circuit Court is affirmed.

DYCHE, JUDGE CONCURS.

JOHNSON, JUDGE CONCURS IN RESULT.

BRIEF FOR APPELLANT:

Kim Brooks
Covington, KY

BRIEF FOR APPELLEE:

A. B. Chandler, III
Attorney General

Carlton S. Shier, IV
Assistant Attorney General
Frankfort, KY