

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001587-MR

MARK STEVEN DALTON

APPELLANT

v. APPEAL FROM MARTIN CIRCUIT COURT
HONORABLE DANIEL SPARKS, JUDGE
INDICTMENT NO. 00-CR-00047

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: BAKER and SCHRODER, Judges; HUDDLESTON, Senior Judge.¹
HUDDLESTON, Senior Judge: Mark Steven Dalton appeals from
Martin Circuit Court's April 26, 2002, denial of his pro se
motion to withdraw his guilty plea. On appeal, Dalton argues
that the circuit court abused its discretion when it denied his
motion to withdraw his guilty plea that was based on the
assertion that his plea was involuntary under the totality of

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

the circumstances. Because the circuit court did not abuse its discretion, we affirm its decision.

On December 21, 2000, a Martin County grand jury indicted Dalton on one count of sodomy in the first degree and one count of assault in the second degree. On March 21, 2001, Dalton appeared for arraignment and pled not guilty.

At his trial attorney's request, the circuit court, on August 9, 2001, ordered the Kentucky Correctional Psychiatric Center (KCPC) to evaluate Dalton regarding competency and criminal responsibility. On November 16, 2001, Dr. Richard K. Johnson, the licensed clinical psychologist at KCPC assigned to evaluate Dalton, sent a letter to the circuit court in which he related that Dr. Nasiruddin Siddiqui, Dalton's attending psychiatrist at KCPC, had diagnosed Dalton with a major depressive disorder and an anxiety disorder. Dr. Siddiqui opined that if Dalton were returned to the local detention center without additional treatment he would be at risk of self-harm. In response to Dr. Johnson's letter, the circuit court ordered Dalton to remain at KCPC for an additional thirty days to receive treatment.

After Dalton returned from KCPC, the circuit court scheduled a jury trial for February 11, 2002. On the day of trial, Dalton pled guilty in reliance on the Commonwealth's offer for Dalton to serve concurrent ten-year sentences on each

count. The circuit court had scheduled Dalton for final sentencing on April 26, 2002. However, before the circuit court could sentence Dalton, he, without explanation, moved to withdraw his guilty plea. The circuit court denied Dalton's motion at that time, but in response to it scheduled a competency hearing. Following the competency hearing, the court once again denied Dalton's motion to withdrawal his guilty plea and sentenced him in accordance with the Commonwealth's recommendation. After final sentencing, Dalton timely appealed to this Court.

On appeal, Dalton cites Brady v. United States² and Boykin v. Alabama³ and points out that the United States Constitution mandates that before a trial court accepts a guilty plea it must ascertain that the defendant is voluntarily, knowingly and intelligently pleading guilty. Dalton argues that the circuit court failed to do so in his case. Dalton asserts that the court abused its discretion when it denied his motion to withdrawal his guilty plea and in the process violated his Fourteenth Amendment due process rights because under the totality of the circumstances his plea was neither knowing nor voluntary.

Dalton points out that at sentencing he asked the circuit court if he could be paroled after a little while.

² 397 U.S. 742, 90 S. Ct. 1463, 25 L. Ed. 2d 747 (1970).

³ 395 U.S. 238, 89 S. Ct. 1709, 1712, 23 L. Ed. 2d 274 (1969).

According to Dalton, this clearly demonstrates that he did not understand his parole eligibility; thus, he did not understand the consequences of pleading guilty. Dalton insists that this statement clearly implies that he did not understand that he was required to serve eighty-five percent of his sentence before becoming eligible for parole. Furthermore, he insists, this demonstrates that his trial attorney never explained the consequences of pleading guilty, and therefore rendered ineffective assistance. Consequently, the circuit court abused its discretion by failing to conduct an evidentiary hearing to consider his ineffective assistance of counsel claim. And, because his trial attorney was ineffective, there was a conflict of interest between Dalton and his trial counsel when he moved to withdraw his guilty plea.

Dalton contends that his guilty plea was involuntary because he has an IQ of 76. He reminds this Court that Dr. Siddiqui at KCPC had diagnosed him with major depression and anxiety. In addition, Dr. Johnson testified that while at KCPC, Dalton's depression and anxiety interfered with his ability to think during the evaluation process. According to Dalton, Dr. Johnson testified that Dalton was confused, indecisive, easily distracted and unable to concentrate. Furthermore, Dr. Johnson testified that while at KCPC Dalton was competent, he could not state that Dalton was still competent several months later.

At final sentencing, Dalton told the circuit court:

On the day that we were suppose to have trial, I was ready to have trial then I got a lot of confusion and couldn't think straight and I didn't actually know what I was doing. I didn't . . . I don't even remember reading the papers that I signed. I can't remember nothing right now. I was so confused. I just didn't understand it. I was nervous. I never really fully understood all of the statements that was on that.

Dalton argues that the Commonwealth never refuted these statements. Thus, under the totality of the circumstances, his plea was involuntary.

Dalton argues that the circuit court based the denial of his motion solely on the Boykin colloquy. According to Dalton, the colloquy was insufficient to show that his plea was voluntary because on two occasions during the colloquy he told the circuit court that he did not understand what the court was saying regarding the sentencing recommendation.

When a criminal defendant pleads guilty, Kentucky Rules of Criminal Procedure (RCr) 8.10 requires the trial court taking the guilty plea to determine on the record whether the

defendant is knowingly, freely and voluntarily pleading guilty.⁴ Once a defendant has pled guilty, he may move the trial court to withdraw his guilty plea, pursuant to RCr 8.10 and the trial court may within its discretion either grant or deny the motion.⁵ When a trial court denies a criminal defendant's motion to withdraw his guilty plea, this Court will not reverse the denial unless the trial court has abused its discretion.⁶ A trial court has abused its discretion when its actions were arbitrary and capricious under the circumstances.⁷ A court acts arbitrarily and capriciously when its actions are not supported by substantial evidence.⁸

On February 11, 2002, the circuit court held a hearing regarding Dalton's motion to enter a guilty plea, and it engaged in a thorough Boykin colloquy to ascertain whether Dalton was voluntarily, knowingly and intelligently pleading guilty. The court explained to Dalton that he had certain constitutional rights and if he pled guilty he would be waiving those rights. On the record, Dalton acknowledged this. The court asked Dalton if his trial counsel had read the Commonwealth's offer and his own motion to enter a guilty plea to him; and the court asked if Dalton had read the documents himself. Dalton answered both

⁴ Bronk v. Commonwealth, Ky., 58 S.W.3d 482, 486 (2001).

⁵ Id.

⁶ Id. at 487.

⁷ Kuprion v. Fitzgerald, Ky., 888 S.W.2d 679, 684 (1994).

⁸ NCAA v. Lasege, Ky., 53 S.W.3d 77, 85 (2001).

questions affirmatively. The court then asked if Dalton understood the documents; he indicated that he did. The court elicited from Dalton that he was taking medication for depression and followed by asking him whether the medications affected his ability to make a rational decision. Dalton indicated the medication did not. The court asked Dalton what he understood the Commonwealth's offer to be. At first, this confused Dalton, but Dalton quickly indicated he understood the offer to be ten years on each count to be served concurrently. During the colloquy, Dalton stated that he was pleading guilty because he was, in fact, guilty and that he was satisfied with his trial attorney's performance.

At the July 2, 2002, competency hearing, the circuit court swore in only one witness, Dr. Richard Johnson, who testified regarding the results of Dalton's psychological evaluation at KCPC. According to Dr. Johnson, Dalton's IQ of 76 placed him in the lower five percentile of the population. However, Dr. Johnson opined that Dalton was not mentally retarded. Dr. Johnson testified that Dr. Siddiqui, Dalton's attending psychiatrist, had diagnosed Dalton as suffering from major depression and anxiety. Dr. Siddiqui had prescribed several medications for Dalton including Zoloft, an anti-depressant; Trazedone, a sleep aid; Naprosyn, a pain medication; and Seraquel, a calming agent. Dr. Johnson testified that none

of these medications would have interfered with Dalton's ability to think rationally; in fact, according to Dr. Johnson, Zoloft would have enhanced Dalton's ability to concentrate. Dr. Johnson observed that Dalton may have found a jury trial stressful and would have probably required short breaks to compose himself, yet, despite this, Dalton was competent to stand trial and could be held criminally responsible for his actions.

The voluntariness of a guilty plea can only be determined from the totality of the circumstances surrounding it.⁹ Dalton asserted that his plea was involuntary because he was confused, nervous and could not think straight. However, the record of both the Boykin colloquy and the competency hearing support the circuit court's finding that Dalton's plea was, in fact, intelligently, knowingly and voluntarily made. Furthermore, contrary to what he now claims, Dalton never argued before the circuit court that his trial counsel was ineffective. Thus, the circuit court did not abuse its discretion when it denied Dalton's motion to withdraw his guilty plea.

The order denying Dalton's motion to withdraw his guilty plea is affirmed.

ALL CONCUR.

⁹ Rodriguez v. Commonwealth, Ky., 87 S.W.3d 8, 10 (2002).

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