

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2008-CA-002009-MR

ROBERT CALDWELL, JR.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE MARTIN F. MCDONALD, JUDGE  
ACTION NO. 07-CR-002275

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE, KELLER, AND LAMBERT, JUDGES.

KELLER, JUDGE: Robert Caldwell, Jr. (Caldwell) appeals from the judgment of the Jefferson Circuit Court sentencing him to fifteen years' imprisonment. For the reasons stated below, we affirm.

On March 12, 2007, Caldwell, a convicted felon, was arrested for firing shots in the air from a handgun while in close proximity to four individuals.

As a result, Caldwell was indicted on July 10, 2007, for one count of possession of a handgun by a convicted felon and four counts of first-degree wanton endangerment. Caldwell negotiated a plea agreement with the Commonwealth in which he agreed to plead guilty to all five charges. In exchange, the Commonwealth agreed that it would recommend a sentence of five years on one count of possession of a handgun by a convicted felon, four years each on two counts of first-degree wanton endangerment, and one year each on the remaining two counts of first-degree wanton endangerment. All sentences were to run consecutively for a total of 15 years. Further, the Commonwealth agreed that it would not object to Caldwell's release on his own recognizance pending sentencing. Additionally, the Commonwealth agreed that it would not object to probation. However, if Caldwell picked up any new charges, failed to appear for sentencing, or failed to cooperate with his pre-sentence investigation, then his sentence would be 15 years with no motions for early release of any type.

In accordance with the agreement, Caldwell pled guilty in open court on June 9, 2008. At the hearing, the trial court explained to Caldwell that if he violated any of the release conditions, then the Commonwealth would object to probation. Caldwell acknowledged that he understood the condition. After conducting a guilty plea colloquy, the trial court accepted Caldwell's guilty plea and granted Caldwell's motion for release pending his sentencing scheduled for August 18, 2008.

On the day after entering his guilty plea, Caldwell was charged with theft by unlawful taking under \$300 for failing to scan a hair coloring product valued at \$4.99 while using the U-Scan self-service checkout lane at a Kroger store. On August 18, 2008, Caldwell appeared for sentencing but his attorney was not present. After learning that Caldwell picked up new charges between the date he entered his guilty plea and the sentencing date, the trial court revoked Caldwell's bond and he was taken into custody. The trial court then rescheduled the sentencing for September 25, 2008.

On September 25, 2008, the Commonwealth asked that Caldwell be sentenced to 15 years with no probation because he picked up new charges while he was out of custody on his own recognizance. Caldwell argued that he should be given a continuance until after his trial on his new charges. The trial court denied Caldwell's motion for a continuance and sentenced Caldwell to a total of fifteen years on the five charges. This appeal followed.

The first argument that Caldwell makes is that the plea agreement was not valid. Specifically, Caldwell contends that the condition in the plea agreement stating that the Commonwealth will not object to any motions for probation unless Caldwell "picks up any new charges" is contractually void because it attempts to contract away Caldwell's "presumption of innocence as guaranteed by the Constitution of the United States of America." It appears that Caldwell is arguing that the sentencing recommendation in his plea agreement should have been

conditioned on him not receiving an actual criminal conviction rather than on unproven criminal charges. We disagree.

A plea agreement is a binding contract between the Commonwealth and a defendant once it is accepted by a trial court. *Hensley v. Commonwealth*, 217 S.W.3d 885, 887 (Ky. App. 2007). When courts interpret and enforce plea agreements, they must use traditional principles of contract law in determining the obligations of the contracting parties. *Elmore v. Commonwealth*, 236 S.W.3d 623, 626 (Ky. App. 2007). Moreover, the Supreme Court of Kentucky has acknowledged that sentencing recommendations conditioned on a defendant's promise to adhere to good conduct are valid. *See Jones v. Commonwealth*, 995 S.W.2d 363, 366 (Ky. 1999).

In *Jones*, the defendant entered a plea agreement reducing a potential twenty-year sentence to six years for various charges related to fraudulent activity. *Id.* at 365. The six-year sentence was conditioned upon defendant's appearance at the sentencing hearing. Additionally, the agreement provided that the defendant's failure to meet that condition would result in a recommendation of a twenty-year sentence. The defendant failed to appear at the sentencing hearing and was subsequently sentenced to twenty years in accordance with the plea agreement. The Supreme Court held that the provision offering a reduced sentence was a lawful plea bargain condition that was legitimately withdrawn when defendant failed to appear for sentencing. *Id.* at 365-66.

Therefore, based on *Jones*, we conclude that the Commonwealth's sentencing recommendation that was conditioned on Caldwell's promise to adhere to good conduct was valid. Thus, once Caldwell breached the plea agreement, the Commonwealth was relieved of its obligation to recommend a favorable sentence. *O'Neil v. Commonwealth*, 114 S.W.3d 860, 864 (Ky. App. 2003). Accordingly, after Caldwell was charged with theft by unlawful taking under \$300, the Commonwealth was permitted to object to probation pursuant to the terms of the plea agreement.

The second argument that Caldwell makes is that the trial court did not exercise independent discretion when it imposed the fifteen-year sentence with no probation as provided in the plea agreement. We disagree.

Generally, trial courts have the discretion to either accept or reject plea agreements. *Hoskins v. Maricle*, 150 S.W.3d 1, 20-24 (Ky. 2004). As noted in *Chapman v. Commonwealth*, 265 S.W.3d 156, 177 (Ky. 2007):

Before accepting any plea agreement, a trial court must assure itself that the agreement is legally permissible and represents an appropriate resolution and punishment for the crime(s) to which the defendant seeks to plead guilty. Thus, a trial court abuses its discretion by automatically accepting or rejecting a guilty plea without first making the particularized and case-specific determinations that the plea is legally permissible and, considering all the underlying facts and circumstances, appropriate for the offense(s) in question.

There is nothing in the record to indicate that the trial court did not exercise independent discretion in accepting the terms of the plea agreement. To

the contrary, the trial court pointed out at the plea hearing that the final decision on whether Caldwell would receive probation was within the discretion of the trial court and that the plea agreement was only a recommendation. The trial court further noted that it would only make its final decision on Caldwell's sentence after considering the Commonwealth's recommendation and the information contained in Caldwell's pre-sentence investigation report. After reviewing the sentencing hearing, it appears that the trial court did consider the Commonwealth's recommendation as well as Caldwell's pre-sentence investigation report. Accordingly, we conclude that the trial court exercised independent discretion in accepting the terms of the plea agreement. Therefore, Caldwell was correctly convicted and sentenced pursuant to the terms of the plea agreement.

For the foregoing reasons, we affirm the judgment of the Jefferson Circuit Court.

ALL CONCUR.

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