

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-000575-MR

JAMES DAVID ADKINS

APPELLANT

v. APPEAL FROM OHIO CIRCUIT COURT
HONORABLE RONNIE C. DORTCH, JUDGE
ACTION NO. 06-CR-00051

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: DIXON AND VANMETER, JUDGES; AND LAMBERT,¹ SENIOR JUDGE.

DIXON, JUDGE: James David Adkins appeals the Ohio Circuit Court's denial of his motion to withdraw his guilty plea pursuant to Kentucky Rules of Criminal Procedure (RCr) 8.10. Finding no error, we affirm.

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

In February 2006, an Ohio County grand jury indicted Adkins on two counts of first-degree rape, two counts of first-degree unlawful transaction with a minor, twenty counts of promoting a sexual performance by a minor, and twenty counts of use of a minor in a sexual performance. Following several continuances, Adkins's case was scheduled for a jury trial in November 2008. On the morning of trial, Adkins accepted the Commonwealth's offer of a fifteen-year sentence in exchange for pleading guilty to first-degree unlawful transaction with a minor (two counts) and second-degree unlawful transaction with a minor (five-counts), with the remainder of the indictment to be dismissed. The court conducted a guilty plea hearing, wherein Adkins expressed both understanding of the plea agreement and satisfaction with his attorney's representation. Adkins participated in a standard plea colloquy, and the court determined that the plea was entered voluntarily, knowingly, and intelligently.

Prior to his final sentencing, Adkins filed several *pro se* motions. In two of the motions, Adkins sought to withdraw his guilty plea due to ineffective assistance of counsel, prosecutorial/police misconduct, and intimidation. In January 2009, the court allowed Adkins's attorney, Dan Jackson, to withdraw from the case due to the nature of Adkins's *pro se* allegations.

On February 26, 2009, the court held a hearing on the motion to withdraw guilty plea, and Adkins acted as co-counsel with a court-appointed public defender.

Thereafter, the court rendered an order denying Adkins's motion, and this appeal followed.

A defendant who moves to withdraw his guilty plea as involuntary is entitled to a hearing, and the trial court must consider the totality of the circumstances in ruling on the motion. *Edmonds v. Commonwealth*, 189 S.W.3d 558, 566 (Ky. 2006). If the trial court concludes the plea was voluntary, the court may either grant or deny the motion as a matter of discretion. *Id.* The trial court's decision as to voluntariness is necessarily fact-sensitive; consequently, on appellate review, we will not disturb the court's decision unless it was clearly erroneous. *Id.*

Adkins asserts that his plea was involuntary because, at the time he pled guilty, he was unaware that he would be required to register as a sex offender upon his release from prison. A review of the hearing reveals that, at the conclusion of the plea colloquy, the court accepted Adkins's plea and found him guilty of the offenses. Moments later, the prosecutor asked the judge to address sex offender registration, and Attorney Jackson stated to the court that he had advised Adkins he was not "positive" about whether registration would be required. The court then fully explained the registration requirements to Adkins, and Adkins stated that he understood.

While it is true that a defendant can allege his plea was involuntary if he "lacked full awareness of the direct consequences of the plea[,]" *Id.*, this Court has held that "it is plain that the [sex offender] registration requirement constitutes a purely collateral consequence which implicates neither the constitutionality of [the]

plea nor [] counsel's effectiveness.” *Carpenter v. Commonwealth*, 231 S.W.3d 134, 137 (Ky. App. 2007). Accordingly, because sex offender registration was a collateral aspect of Adkins’s convictions, Adkins’s alleged lack of knowledge of his duty to register did not undermine the voluntariness of his guilty plea. *Id.*

Furthermore, Adkins’s argument implies that his plea was involuntary due to ineffective assistance of counsel; however, he has not stated that he would have insisted on going to trial if he had known of the registration requirement prior to his plea. *See Sparks v. Commonwealth*, 721 S.W.2d 726, 727-28 (Ky. App. 1986) (“but for the errors of counsel, there is a reasonable probability that the defendant would not have pleaded guilty, but would have insisted on going to trial”). As the trial court pointed out, Adkins received a generous plea agreement from the Commonwealth. If Adkins had gone to trial, he faced a potential sentence of seventy years and parole eligibility after serving 85%. Instead, pursuant to his plea agreement, he received a fifteen-year sentence with parole eligibility after serving 20% of his sentence.

After careful review, we conclude that substantial evidence supports the finding that Adkins’s guilty plea was voluntary; consequently, the trial court’s decision was not clearly erroneous.

Adkins alternatively contends that the trial court abused its discretion by denying his motion without fully investigating the circumstances of his guilty plea. We disagree, as the record reflects that the court gave Adkins and his co-counsel ample time to argue the motion, and Adkins’s presentation focused on allegations

of illegal wiretapping and errors that occurred during a suppression hearing. Based upon our review, the trial court's denial of Adkins's motion was neither arbitrary nor unfair; consequently, the court did not abuse its discretion.

For the reasons stated herein, we affirm the order of the Ohio Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Linda Roberts Horsman
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

Jason B. Moore
Assistant Attorney General
Frankfort, Kentucky