

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-001897-MR

WILLIE BALDON

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE OLU A. STEVENS, JUDGE
ACTION NO. 08-CR-002029

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CLAYTON, NICKELL AND THOMPSON, JUDGES.

THOMPSON, JUDGE: Willie Baldon appeals his conviction in the Jefferson Circuit Court pursuant to a guilty plea. For the reasons stated, we affirm.

On July 3, 2008, Baldon was indicted by a Jefferson County grand jury on one count of knowingly exploiting an adult for over \$300; three counts of theft by deception over \$300; one count of complicity to commit theft by deception over

\$300; one count of theft by unlawful taking over \$300; and being a persistent felony offender in the first degree (PFO I). The basis of these charges were a series of home repair transactions between Baldon and Patsy Adams, his co-defendant, and multiple property owners. The home owners, who were elderly, claimed that they paid Baldon and Adams for home repairs that were insufficiently completed or simply not performed.

On the day of trial, Baldon informed the trial court that he wanted to discuss his *pro se* motions that he had previously filed. The trial court denied Baldon's request, stating that only Baldon's counsel's motions would be heard. Baldon's counsel then informed the trial court that Baldon desired additional witnesses to be called on his behalf. After the Commonwealth objected to these witnesses, the trial court denied Baldon's request and ordered that the trial would commence the following morning.

Within an hour, the parties approached the bench and began discussing a plea agreement that Baldon had accepted. The Commonwealth informed the trial court that the plea agreement entailed Baldon pleading guilty to all of the counts of his indictment except the exploitation charge, which would be dismissed. The Commonwealth further stated that it would recommend a ten-year sentence. Finally, the Commonwealth stated that it was dismissing Patsy Adams's charges in exchange for Baldon's acceptance of the plea agreement.

The trial court and Baldon then engaged in a plea colloquy. During the colloquy, Baldon affirmed that he had read the plea documents; that he signed and

understood the terms of his plea; that he had no history of mental illness; and that he was not taking any medication or drugs that would affect his judgment. The trial court then informed Baldon of his various constitutional rights and that he would be waiving these rights if he elected to enter a guilty plea. After the trial court concluded its explanations, Baldon momentarily hesitated and then affirmed that he was entering the plea agreement on his own volition.

The trial court informed Baldon that he did not have to be happy with his deal but had to understand it and accept it freely and voluntarily. Baldon reaffirmed his acceptance of the plea agreement and stated that he wanted to accept responsibility for his actions. The trial court then requested the facts giving rise to Baldon's charges be recited by the Commonwealth. It gave a general statement to each count that Baldon had illegally taken over \$300 from named victims with regard to repairs to be performed at their respective residences. It stated that Baldon's theft by unlawful taking charge resulted from the theft of a ladder, which had been rented from Kentucky Rentals but never returned. The Commonwealth stated that Baldon's PFO I charge was based on his two prior felony convictions.

When asked if he agreed with the Commonwealth's facts, Baldon asked to consult with his counsel. After speaking with his client, defense counsel spoke with the Commonwealth and then informed the trial court that Baldon asserted that two of the victims, Wanda Matherly and Malcolm Collins, received

their money back. Thus, defense counsel stated that Baldon desired to enter an *Alford*¹ plea to the charges relating to Matherly and Collins.

The trial court asked Baldon if he wanted to maintain his innocence on the two charges but accept the plea to settle his case. Baldon responded affirmatively and that his plea was in his best interest. The trial court then asked Baldon whether he was admitting to the Commonwealth's statement of facts except for his charges relating to Matherly and Collins. Baldon answered in the affirmative. Responding to the trial court's questions, Baldon stated that he was guilty of the charges listed in his plea agreement. After Baldon's counsel stated that he believed that Baldon understood the proceedings, the trial court accepted Baldon's plea.

Subsequent to his plea hearing, Baldon sent a letter to the trial court wherein he asserted his innocence. He wrote that he had either reimbursed all of the victims or was willing to complete their home repairs. Baldon's letter was treated as a *pro se* motion to withdraw his plea and Baldon's counsel supplemented the *pro se* motion by filing a formal motion to withdraw the guilty plea. In his motion, Baldon's counsel argued that the guilty plea should be permitted to be withdrawn because Baldon had accepted the plea under duress and coercion.

At this point, the trial judge who previously presided over Baldon's case retired and a new trial judge was assigned to preside over the proceedings. On July 30, 2009, the trial court conducted a hearing on Baldon's motion to

¹ *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970).

withdraw his guilty plea. During the hearing, Baldon argued that he was under duress, stress, and coercion at the time he entered his guilty plea. He stated that several of his *pro se* motions were not addressed until the day of trial and that he believed that the prosecutor had deliberately withheld discovery. Because of these issues, he contended that he was pressured into pleading guilty. Further, Baldon's counsel stated that Baldon was represented by three different attorneys during the course of his criminal case. Counsel further stated that he had received some taped statements of witnesses late in the case's development.

The Commonwealth argued that the trial court should examine the totality of the circumstances in determining the validity of Baldon's guilty plea. The Commonwealth further cited Baldon's demeanor in court, Baldon's criminal history, and the victims' ages as grounds for denying Baldon's motion. Baldon and his counsel responded that the original trial judge's failure to rule on Baldon's *pro se* motions, which were denied, until the day of trial pressured his decisions. At the conclusion of the hearing, the trial court took the motion under submission.

On July 31, 2009, the trial court issued an order denying Baldon's motion to withdraw his guilty plea. Subsequently, the trial court sentenced Baldon to three years' imprisonment on each of his three counts of theft by deception, which was enhanced to a ten-year term by virtue of the PFO I conviction; three years' imprisonment for his theft by deception conviction based on his *Alford* plea, which was enhanced to a ten-year term by virtue of the PFO I conviction; and three years' imprisonment for theft by unlawful taking of property conviction based on

his *Alford* plea, which was enhanced to a ten-year term by virtue of the PFO I conviction. The trial court ordered that Baldon's sentences be served concurrently for a total effective sentence of ten years' imprisonment.

Baldon argues that the trial court erred by denying his motion to withdraw his guilty plea because his plea colloquy did not establish a factual basis for his guilty plea. Baldon further argues that the trial court only received vague descriptions by the Commonwealth regarding the crimes and that they were insufficient to establish that his plea was entered voluntarily.

A trial court may accept a defendant's guilty plea to a criminal charge, but the plea must be voluntarily made and with an understanding of the nature of the charge. *Edmonds v. Commonwealth*, 189 S.W.3d 558, 565 (Ky. 2006). RCr 8.10 provides that a defendant may withdraw his guilty plea with the permission of the court before judgment. *Williams v. Commonwealth*, 229 S.W.3d 49, 51 (Ky. 2007). A motion to withdraw a guilty plea is generally addressed to the sound discretion of the trial court and is reviewed to determine only if the court abused its discretion. *Commonwealth v. Lopez*, 267 S.W.3d 685, 689 (Ky.App. 2008). A trial court will only be found to have abused its discretion when its decision was unfair, arbitrary, unreasonable, or not supported by sound legal principles. *Gamble v. Commonwealth*, 293 S.W.3d 406, 409 (Ky.App. 2009).

On June 22, 2006, the trial court conducted a plea colloquy with Baldon pursuant to *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969), at which time Baldon acknowledged the consequences of pleading guilty.

He acknowledged that he was waiving his right to a trial; his right against compelled self-incriminating testimony; his right to confront the prosecution's witnesses; and his right to present a defense to the charges against him. He further informed the trial court that he had read and signed the plea agreement.

The trial court then went through all of Baldon's charges and obtained a description of the nature of all of the charges. When Baldon had reservations with the Commonwealth's factual description of two of his charges and asked to enter an *Alford* plea on the two charges, the trial court permitted the modification but persistently asked Baldon if he still desired to enter the guilty plea. Baldon insisted on pleading guilty and that the guilty plea was in his best interest. At the end of the hearing, Baldon admitted to the crimes listed in the plea agreement.

After reviewing the record, we conclude that the trial court did not abuse its discretion by denying Baldon's motion to withdraw his guilty plea. The record reflects that his plea was entered intelligently, knowingly, and voluntarily. The trial court informed Baldon of the charges against him, his constitutional rights, and obtained his acknowledgment that he understood the plea agreement and desired to accept it. Baldon further affirmed that he discussed the plea agreement with his counsel and that he was satisfied with his representation.

While Baldon contends that there was an insufficient factual basis to establish the voluntariness of his guilty plea, our Supreme Court has stated that "the requirement for a factual basis is satisfied in cases that do not involve unduly complicated crimes if a summary of the charges is read to the defendant and the

defendant admits to having committed the offense.” *Chapman v. Commonwealth*, 265 S.W.3d 156, 183 (Ky. 2007). In this case, Baldon accepted guilt after the trial court informed him of his charges. He further agreed on the Commonwealth’s recitation of the facts except for two charges, which he entered an *Alford* plea. Thus, there was a sufficient factual basis for his guilty plea.

For the foregoing reasons, the Jefferson Circuit Court’s judgment of conviction is affirmed.

ALL CONCUR.

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