

RENDERED: SEPTEMBER 16, 2016; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2015-CA-000962-MR

JEFFERY JORDAN

APPELLANT

v. APPEAL FROM CLARK CIRCUIT COURT
HONORABLE WILLIAM G. CLOUSE, JR., JUDGE
ACTION NO. 14-CR-00109

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: KRAMER, CHIEF JUDGE; CLAYTON AND J. LAMBERT,
JUDGES.

KRAMER, CHIEF JUDGE: Jeffery Jordan appeals the Clark Circuit Court's judgment convicting him of Failure to Comply with Sex Offender Registration, First Offense, and Failure of Owner to Maintain Required Insurance/Security, First Offense. After a careful review of the record, we affirm because Jordan failed to

ensure that we had a complete record before us to conduct a meaningful appellate review.

I. FACTUAL AND PROCEDURAL BACKGROUND

Jordan was indicted on the charges of: (1) Failure to Comply with Sex Offender Registry and (2) No Insurance. Jordan moved to enter a conditional guilty plea to the charges, reserving the right to appeal “the issue of whether or not he is required to register as a sex offender in Kentucky based upon a juvenile disposition in another state.” In an addendum to his motion to enter a conditional guilty plea, Jordan stated it was his understanding that the Commonwealth agreed that if Jordan entered a guilty plea, the Commonwealth would recommend a maximum sentence of one year of imprisonment.

The circuit court accepted Jordan’s guilty plea to the charge of No Insurance and his conditional guilty plea to the charge of Failure to Comply with Sex Offender Registration. The court subsequently entered its judgment sentencing Jordan to one year of imprisonment for the Failure to Comply with Sex Offender Registration conviction and a fine of \$500.00 and court costs for the Failure of Owner to Maintain Required Insurance/Security conviction. However, the court then set aside the sentence of imprisonment for the Failure to Comply with Sex Offender Registration conviction and sentenced Jordan to a period of supervised probation for two years.

Jordan now appeals, contending that his conviction for failing to register as a sex offender should be reversed because the record failed to establish

that he had to register in Kentucky based on a juvenile offense from Michigan.¹ The Commonwealth argues the appeal should be dismissed because Jordan never moved to dismiss the charge or challenge it through any other motion in the trial court on the basis that he did not have to register as a sex offender in Kentucky based on his offense in Michigan. The Commonwealth further asserts that because there was no such motion, there was also no adverse determination by the circuit court finding that Jordan was required to register.

II. ANALYSIS

Jordan asserts that his conviction for failing to register as a sex offender should be reversed because the record failed to establish that he had to register in Kentucky based on a juvenile offense from Michigan. We begin by noting that the Commonwealth is correct that Jordan never argued this before filing his motion for a conditional guilty plea, in which he simply stated that he was conditioning his guilty plea on this claim without providing any argument in support of the claim. Further, as noted by the Commonwealth, the circuit court never entered an order explaining why Jordan was required to register in Kentucky.

Regarding the entering of conditional guilty pleas, Kentucky Rules of Criminal Procedure (CR) 8.09 provides:

With the approval of the court a defendant may enter a conditional plea of guilty, reserving in writing the right, on appeal from the judgment, to review of the adverse determination of any specified trial or pretrial motion. A

¹ Because Jordan's guilty plea regarding his Failure of Owner to Maintain Required Insurance/Security conviction was unconditional, that conviction is not before us in this appeal.

defendant shall be allowed to withdraw such plea upon prevailing on appeal.

Pursuant to *Dickerson v. Commonwealth*, 278 S.W.3d 145 (Ky. 2009), an appellate court

[w]ill consider issues on appeal from a conditional guilty plea only if those issues: (1) involve a claim that the indictment did not charge an offense or the sentence imposed by the trial court was manifestly infirm, or (2) the issues upon which appellate review are sought were expressly set forth in the conditional plea documents or in a colloquy with the trial court, or (3) if the issues upon which appellate review is sought were brought to the trial court's attention before the entry of the conditional guilty plea even if the issues are not specifically reiterated in the guilty plea documents or plea colloquy.

Dickerson, 278 S.W.3d at 149.

In *Dickerson*, the Kentucky Supreme Court reasoned as follows:

In the case at hand, before the day he entered his conditional guilty plea, Dickerson had submitted a motion to dismiss the indictments with prejudice because of alleged prosecutorial vindictiveness and a separate motion for a speedy trial. And the trial court was aware, or should have been aware, of the issues raised in this appeal at the time it accepted Dickerson's conditional plea. So we hold that Dickerson has sufficiently preserved for our review the issues in this appeal. It would have been far better practice, of course, if the issues upon which Dickerson's guilty plea were conditioned had been identified in the record, instead of Dickerson's counsel's vague statement that Dickerson's plea was conditional merely because Dickerson wanted to have "something general" upon which to base an appeal. Had the issues raised in Dickerson's appeal not been expressly raised in the circuit court, we would not have considered them on appeal.

Dickerson, 278 S.W.3d at 149. The Supreme Court found that the issues in Dickerson’s appeal had been adequately raised because the trial court was aware of the issues raised in the appeal at the time it accepted Dickerson’s conditional guilty plea. Therefore, the Court considered those issues on appeal.

Moreover, in *Helphenstine v. Commonwealth*, 423 S.W.3d 708 (Ky. 2014), the Kentucky Supreme Court noted that “[i]f the appellate issue is not specifically mentioned in the plea colloquy, we will still undertake review if the issue was “brought to the trial court’s attention before the entry of the conditional plea[.]”” *Helphenstine*, 423 S.W.3d at 712 (quoting *Dickerson*, 278 S.W.3d at 149).

In the present case, as previously mentioned, Jordan never raised this argument before filing his motion for a conditional guilty plea, and even in that motion, he simply stated that he was conditioning his guilty plea on this claim without providing any argument in support of the claim. Further, the circuit court never entered an order explaining why Jordan was required to register in Kentucky. Courts in Kentucky have long held that courts speak only through their written decisions. *See Charalambakis v. Asbury University*, 488 S.W.3d 568, 582 n.8 (Ky. 2016) (citing *Midland Guardian Acceptance Corporation of Cincinnati, Ohio v. Britt*, 439 S.W.2d 313, 314 (Ky. 1968)). Nevertheless, because Jordan brought the issue of “whether or not he is required to register as a sex offender in Kentucky based upon a juvenile disposition in another state” in his motion to enter a conditional guilty plea, it was brought to the trial court’s attention before the court

accepted Jordan's conditional guilty plea.² Therefore, we will undertake review of the issue, pursuant to *Dickerson*. See also *Fore v. Commonwealth*, No. 2007-CA-001382-MR, 2009 WL 3319987, *1 (Ky. App. Oct. 16, 2009) (unpublished) (Case in which this Court initially held, in *Fore v. Commonwealth*, No. 2007-CA-001382-MR, 2008 WL 4531032, *1 (Ky. App. Oct. 10, 2008) (unpublished), that because the court speaks only through its written record, defendant was not entitled to appeal his conviction due to the fact that the trial court's judgment did not reflect that the guilty plea was conditional even though during the plea colloquy, both defendant and the court stated that the guilty plea was entered conditionally. However, on appeal the Kentucky Supreme Court remanded the case to this Court in light of *Dickerson*, and based upon *Dickerson*, this Court then reviewed the merits of the defendant's claims).³

Jordan claims that although defense counsel acknowledged during the sentencing hearing that Jordan had a prior juvenile offense in Michigan, there is no evidence in the record before us about the specifics of Jordan's prior offense to determine whether he was required to register as a sex offender in Kentucky.

However,

[a]n appellate court will not vacate a final judgment because of the failure of a trial court to make a finding of fact on an issue essential to the judgment unless such failure is brought to the attention of the trial court by a

² We believe the best course of action is a written order entered on the official record regarding a conditional guilty plea because it ensures that the appellate court is reviewing not only the trial court's ultimate decision, but also its rationale. Nonetheless, binding case law on this particular issue holds otherwise.

³ Both *Fore* cases are cited pursuant to CR 76.28(4)(c).

written request for a finding on that issue or by a motion pursuant to CR 52.02.

Helphenstine, 423 S.W.3d at 713. In the present case, Jordan questions whether he was required to register as a sex offender in Kentucky based upon his prior juvenile offense. However, a key factual determination that we need to review this claim is missing—what that prior juvenile offense was. Jordan should have made a written request for a finding regarding what his prior offense was, but he failed to do so. Therefore, this claim is not reviewable on appeal.

Accordingly, the judgment of the Clark Circuit Court is affirmed.

ALL CONCUR.

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