

RENDERED: August 8, 1997; 2:00 p.m.
NOT TO BE PUBLISHED

NO. 96-CA-1935-MR

JAMES McINTIRE

APPELLANT

v.

APPEAL FROM KENTON CIRCUIT COURT
HONORABLE PATRICIA M. SUMME, JUDGE
ACTION NO. 96-CR-103

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** ** ** **

BEFORE: KNOPF, MILLER, and SCHRODER, Judges.

MILLER, JUDGE. James McIntire brings this appeal from a July 2, 1996, judgment of the Kenton Circuit Court. We affirm.

On March 8, 1996, the Grand Jury of Kenton County indicted appellant for the offense of first-degree rape (Ky. Rev. Stat. (KRS) 510.040). On May 6, 1996, a plea agreement was reached with the Commonwealth, and appellant pled guilty to the reduced offense of sexual abuse in the first-degree (KRS 510.110). The Commonwealth recommended a term of three and one-half years imprisonment. On June 4, 1996, and prior to final sentencing upon

the guilty plea, appellant moved the court for leave to withdraw his plea. The circuit court overruled appellant's motion on June 10, 1996, and on July 2, 1996, appellant was sentenced accordingly. This appeal followed.

Appellant claims that his guilty plea was not voluntary and, thus, the circuit court should have granted his motion to withdraw. He further contends that the record fails to disclose whether a hearing was conducted upon his motion to withdraw. We note that the circuit court's calendar indicates that a hearing was, indeed, held. As appellant has the burden of establishing the record on appeal (Ky. R. Civ. P. 75.01 and Fanelli v. Commonwealth, Ky., 423 S.W.2d 255 (1968)), we are unable to conclude that the court abused its discretion in denying appellant's motion to withdraw his guilty plea. Ky. R. Crim. P. 8.10, and Anderson v. Commonwealth, Ky., 507 S.W.2d 187 (1974).

For the foregoing reasons, the judgment of the circuit court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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