

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-000707-MR

JOSEPH POWERS

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE LEONARD KOPOWSKI, JUDGE
ACTION NO. 96-CR-00393

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: BARBER, DYCHE, AND GUIDUGLI, JUDGES.

DYCHE, JUDGE. Joseph Powers brings this appeal from an order of the Campbell Circuit Court denying his motion to withdraw his plea of guilty, and from the judgment and sentence of six years' imprisonment imposed by the court thereafter. We affirm.

Powers was indicted for Arson, First Degree, in violation of KRS 513.020, a Class "A" felony, carrying a penalty of not less than twenty years' imprisonment. He and his retained counsel entered into a plea agreement with the Commonwealth whereby the charge was amended to criminal attempt to commit Arson, Second Degree; upon his plea to the amended charge, the Commonwealth agreed to recommend a sentence of six years'

confinement. He entered such a plea on January 6, 1998; the trial court scheduled sentencing for February 1, 1998. At that time, Powers indicated he wished to withdraw his plea. The sentencing proceeded in accordance with the agreement.

On February 24, 1998, Powers filed a written motion requesting permission to withdraw his plea. The motion was denied, and this appeal followed.

Whether to allow the withdrawal of a guilty plea is a matter within the sound discretion of the trial court. *Hurt v. Commonwealth, Ky.*, 333 S.W.2d 951 (1960). We find no abuse of that discretion.

Powers contends that the victim of the arson was prepared to testify that Powers lacked the criminal intent to be convicted of the charge, and that this testimony would have significantly affected the outcome of a trial. He further contends that he could not have become aware of this potential testimony earlier than he did, for fear of being charged with Intimidating a Witness.

The victim is obviously not qualified to testify as to Powers's mental state or capacity; such testimony would have been inadmissible and therefore had no effect upon a trial. In addition it escapes us why Powers's retained counsel could not have interviewed the victim earlier; such an action would not have subjected Powers to criminal charges. The arguments are without merit.

The order, judgment, and sentence of the Campbell Circuit Court are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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