

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2000-CA-001782-MR

JAMIE LEE LEDBETTER

APPELLANT

v. APPEAL FROM CLAY CIRCUIT COURT  
HONORABLE R. CLETUS MARICLE, JUDGE  
ACTION NO. 00-CR-00010

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING  
\*\* \*\*

BEFORE: DYCHE, GUIDUGLI, AND KNOPF, JUDGES.

KNOPF, JUDGE: Jamie Lee Ledbetter appeals from an order of the Clay Circuit Court overruling Ledbetter's motion to withdraw his guilty plea. We affirm.

Ledbetter was indicted for robbery in the first degree, fleeing or evading police in the first degree, theft by unlawful taking over \$300.00, and being a persistent felony offender in the second degree. These charges stemmed from a robbery of the R & S Variety Store in Clay County, Kentucky, on December 1, 1999. On April 17, 2000, Ledbetter entered into a negotiated plea of guilt with the Commonwealth. Ledbetter agreed to plead guilty to the charges and the Commonwealth agreed to recommend dismissal of

the PFO count. The Commonwealth also agreed to recommend the minimum sentence on the robbery count of ten years and three years on each of the other counts, all to run concurrently for a total sentence of ten years. Ledbetter moved to withdraw his plea on June 1, 2000, arguing it was not voluntary. The Clay Circuit Court held a hearing on July 17, 2000, and denied Ledbetter's motion by order entered July 21, 2000. The court then sentenced Ledbetter to ten years' imprisonment in accord with the Commonwealth's recommendation. This appeal follows.

Ledbetter's sole argument on appeal is that the trial court erred in denying his motion to withdraw his guilty plea. Ledbetter does not argue that his plea was not voluntary in the sense that it was coerced, but contends his plea to both the robbery and theft counts violates his constitutional protection against double jeopardy. After a careful review of the record and relevant case law, we find Ledbetter waived his right to assert a double jeopardy violation by voluntarily entering a guilty plea to the charge.

Ledbetter failed to raise the double jeopardy argument prior to this appeal, therefore the error is not properly preserved. However, Ledbetter argues that pursuant to Shirley v. Commonwealth, Ky., 558 S.W.2d 615 (1977), we may still review the double jeopardy argument. While Ledbetter is correct that we may still review the double jeopardy issue, it is also true that nothing prevents a defendant from waiving constitutional protection, including the constitutional guarantee against double jeopardy. West v. Commonwealth, Ky., 780 S.W.2d 600 (1989).

The Kentucky Supreme Court in Shirley reviewed an unpreserved double jeopardy claim after the defendant was convicted by a jury. Unlike Shirley, Ledbetter asks us to find a double jeopardy violation after a voluntary guilty plea, not a jury verdict. While it is true that Shirley relies on Menna v. New York, 423 U.S. 61, 96 S. Ct. 241, 46 L. Ed. 2d 195 (1975), in which the Supreme Court reviewed a double jeopardy claim after a guilty plea, it is important to note that in Menna the defendant had raised the double jeopardy argument prior to the entry of his plea. Unlike Menna, Ledbetter did not even mention double jeopardy before the trial court. While Ledbetter's failure to preserve his double jeopardy argument does not prevent us from reviewing such an argument on appeal, his entry of a voluntary and knowing plea does waive that constitutional protection. We decline, therefore, to address whether the prosecution for both theft and robbery charges violated Ledbetter's constitutional right.

Finally, Ledbetter relies on Allen v. Walter, Ky., 534 S.W.2d 453 (1976), to argue his plea agreement was impermissible based on the potential double jeopardy violation, and therefore not voluntary. RCr 8.10 vests great discretion in the trial court regarding the withdrawal of guilty pleas prior to judgment. Anderson v. Commonwealth, Ky., 507 S.W.2d 187 (1974) and Hurt v. Commonwealth, Ky., 333 S.W.2d 951 (1960). Ledbetter's reliance on Allen is misplaced. Allen dealt with a plea based on the assumption a murder charge could be reduced to manslaughter. When the charge could not be reduced, the Court in Allen ruled

the plea was not voluntary. In the case *sub judice* the plea agreement went exactly as negotiated. Ledbetter successfully bargained to have one charge dropped and to receive the minimum sentence on the robbery charge to run concurrently with the other sentences. Ledbetter has presented no other evidence that his guilty plea was not voluntarily entered.

Based on the foregoing we find the trial court did not err in denying Ledbetter's motion to withdraw his guilty plea. Therefore, the Clay Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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