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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-001371-MR

JEFFERY MULLINS — APPELLANT

v.

APPEAL FROM PIKE CIRCUIT COURT
HONORABLE EDDY COLEMAN, JUDGE
ACTION NO. 99-CR-00181

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING
** ** ** ** **

BEFORE: COMBS, McANULTY, and SCHRODER, Judges.

COMBS, JUDGE: Jeffery Mullins ("Mullins") appeals from a judgment of the Pike Circuit Court in which he was convicted of driving under the influence of alcohol, third offense, and operating a motor vehicle on a suspended license, second offense, after entering a conditional plea of guilty pursuant to RCr[1] 8.09. Mullins argues that the trial court improperly enhanced his sentence because of a 1997 DUI conviction obtained by a guilty plea that had not been entered knowingly, intelligently,

[1]Kentucky Rule of Criminal Procedure

and voluntarily. Having concluded that Mullins's 1997 guilty plea satisfied all constitutional requirements, we affirm.

On April 9, 1999, Officer Bruce Anderson of the Pikeville Police Department stopped Mullins after observing him operating his vehicle in the middle of Hambley Boulevard. Mullins admitted to drinking alcoholic beverages, and he failed every field sobriety test given to him. He consented to a breath test, which resulted in a .307 blood alcohol content. Mullins was arrested and indicted by the Pike County Grand Jury.

Mullins moved the trial court to suppress a conviction for DUI, second offense, entered in Floyd District Court on August 25, 1997. In support of his motion, Mullins alleged that this conviction had not been knowingly, intelligently, or voluntarily entered because the Floyd District Court failed to advise him of his constitutional rights. Additionally, Mullins argued that the Floyd District Court also failed to inform him that this conviction could be used to enhance a sentence imposed for any future DUI convictions.

The trial court held a suppression hearing on April 24, 2000. Mullins, the only witness to testify at this hearing, admitted that he signed a form entitled "DUI (Guilty Plea)," but he contended that he did not remember doing so. Mullins also testified that while he could not remember specifically whether the Floyd District Judge reviewed his constitutional rights with him, he believed that the Judge "probably did." At no time during that proceeding was Mullins represented by counsel. On cross-examination, Mullins admitted that he pled guilty so that

he could get out of jail and that he "messed up" and got caught driving under the influence for the second time. Mullins denied, however, that the court explained to him that this guilty plea could be used in the future to enhance a DUI sentence if he was convicted on a subsequent DUI charge. Based upon this testimony, the trial court found that Mullins knew that he was pleading guilty to the DUI charge at issue and that he knowingly, intelligently, and voluntarily waived his constitutional rights. Thus, the trial court denied Mullins's motion, prompting his guilty plea in this case. This appeal follows.

A guilty plea must represent a voluntary and intelligent choice among the alternative courses of action available to a defendant. North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970); Centers v. Commonwealth, Ky. App., 799 S.W.2d 51, 54 (1990); Sparks v. Commonwealth, Ky. App., 721 S.W.2d 726 (1986). The trial court must determine that a defendant's guilty plea is intelligent and voluntary, and this determination must appear in the record. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 1712, 23 L.Ed.2d 274 (1969); Centers, 799 S.W.2d at 54. The validity of a guilty plea is determined from considering the totality of circumstances surrounding it. Commonwealth v. Crawford, Ky., 789 S.W.2d 779, 780 (1990); Kotas v. Commonwealth, Ky., 565 S.W.2d 445, 447 (1978). "A guilty plea that is brought about by a person's own free will is not less valid because he did not know all possible consequences of the plea and all possible alternative courses of action." Jewell v. Commonwealth, Ky., 725 S.W.2d 593, 594 (1987), quoting Turner v.

Commonwealth, Ky. App., 647 S.W.2d 500, 501 (1983). Boykin v. Alabama, supra, does not require that a defendant be informed of the range of sentences which may be imposed. In fact, a knowing, voluntary, and intelligent waiver does not include a requirement that the defendant be informed of every possible consequence or potential contingency of the guilty plea. Turner v. Commonwealth, Ky. App., 647 S.W.2d 500 (1982); Centers, 799 S.W.2d at 55 (1990).

Our review of the record reveals that it conclusively refutes Mullins's claim that he did not knowingly and intelligently plead guilty on August 25, 1997. The record contains an AOC[2] form styled "DUI (Guilty Plea)" signed by Mullins. The guilty plea form notified Mullins that if he pled guilty, he would waive the following constitutional rights: the right against self-incrimination; the right to a speedy and public trial with representation and the reasonable doubt standard of proof; the right to cross-examine witnesses; the right to produce evidence; and the right to appeal to a higher court. This form also listed the penalty ranges that the Floyd District Court might impose. By signing this form, Mullins acknowledged that his guilty plea was knowingly, voluntarily, and intelligently made. At no time during the acceptance of Mullins's guilty plea was the Floyd District Court required to inform Mullins that his guilty plea might some day serve as a basis to enhance a future sentence if he were again convicted of driving under the influence.

[2]Administrative Office of the Courts

Additionally, Mullins testified that he was aware of his constitutional rights — specifically his rights to a trial by jury, his entitlement to counsel, and the assurance that he could not be convicted of the offense unless the Commonwealth proved his guilt beyond a reasonable doubt. Mullins's admission that he pled guilty in order to get out of jail and that he "messed up" by getting caught clearly demonstrates that he voluntarily had pled guilty on August 25, 1997, to the DUI charge at issue. Therefore, we cannot find any evidence that Mullins's guilty plea was invalid.

Mullins also argues that the Floyd District Court appointed a public defender to represent him during the August 1997 proceedings. He alleges that the public defender failed to appear when the guilty plea was entered. The record before us does not support this contention. On the contrary, both the case jacket and the docket sheet signed by Floyd District Judge James R. Allen fail to indicate that counsel was appointed or retained for any portion of those proceedings. Additionally, at the suppression hearing, Mullins admitted that he was <u>never</u> represented by counsel during the proceedings in Floyd District Court. Therefore, this argument lacks credibility and is consequently without merit.

The judgment of the Pike Circuit Court is affirmed.

ALL CONCUR.

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