

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-002374-MR

RICKY D. COX

APPELLANT

v.

APPEAL FROM TAYLOR CIRCUIT COURT
HONORABLE DOUGHLAS M. GEORGE, JUDGE
ACTION NOS. 05-CR-00108 & 05-CR-00200

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CLAYTON AND STUMBO, JUDGES; GRAVES,¹ SENIOR JUDGE.

GRAVES, SENIOR JUDGE: Ricky D. Cox pled guilty to one count of second-degree assault. He received a sentence of ten years' imprisonment. Cox appeals the denial of his motion to withdraw the guilty plea. We affirm.

The Taylor County Grand Jury indicted Cox on charges of first-degree rape, first-degree sodomy, and fourth degree assault. Cox was also charged with being a second-degree persistent felony offender (PFO). Following an evaluation at Kentucky Correctional Psychiatric Center (KCPC), Cox was found competent to stand trial. He then moved to enter a guilty plea pursuant to an agreement with the Commonwealth.

¹ Senior Judge John W. Graves sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Under the terms of the agreement, the PFO and assault charges were dismissed and the rape and sodomy charges were amended to a single count of second-degree assault. The Commonwealth recommended a sentence of ten years' imprisonment. On August 22, 2005, the Taylor Circuit Court conducted a plea colloquy and determined that Cox's plea was knowing, intelligent, and voluntary. On October 10, 2006, Cox made an oral motion to withdraw his guilty plea against the advice of counsel. The trial court denied the motion and sentenced Cox in accordance with the plea agreement. This appeal followed.

Cox argues that the trial court abused its discretion by failing to allow him to withdraw his guilty plea despite his protestation of innocence, alleged confusion, and issues regarding parole eligibility.

RCr 8.10 states in part:

At any time before judgment the court may permit the plea of guilty or guilty but mentally ill, to be withdrawn and a plea of not guilty substituted...

If a guilty plea was voluntary, then the decision to permit its withdrawal is within the discretion of the trial court. *Elkins v. Commonwealth*, 154 S.W.3d 298, 300 (Ky.App. 2004).

We have reviewed the plea colloquy and final sentencing in this case. The trial court conducted a thorough plea colloquy. Contrary to his repeated assertions, Cox, not the trial court, raised the issue of parole eligibility at the sentencing hearing. Cox also protested his innocence and stated that he was not "thinking right." The issue of Cox's medications was discussed at both the plea colloquy and sentencing despite Cox's assertion otherwise. At the time Cox entered his plea, he stated that his judgment was not impaired. Cox also complains that the trial court failed to explain "the

distinction in facts and penalty range from the amendment of the fourth degree assault charge **up** to second degree assault...” to him. The reason for that failure is understandable because the trial court explained that the rape and sodomy charges were amended down to second-degree assault and that the other charges were dismissed. Cox was questioned thoroughly on the voluntariness of his guilty plea. We are convinced that the plea was knowing, intelligent, and voluntary. Further, we agree with the trial court that Cox’s speculation as to his actual chances at receiving parole do not constitute a sufficient basis for withdrawing his plea. The trial court did not abuse its discretion.

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

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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