

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001811-MR

ALAN TROY WILLIAMS

APPELLANT

v. APPEAL FROM SIMPSON CIRCUIT COURT
HONORABLE WILLIAM R. HARRIS, JUDGE
ACTION NO. 04-CR-00172

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: CAPERTON AND CLAYTON, JUDGES; GUIDUGLI,¹ SENIOR JUDGE.

GUIDUGLI, SENIOR JUDGE: Alan Troy Williams pled guilty to an amended charge of first-degree trafficking in a controlled substance, first offense. After a combined penalty phase and persistent felony offender proceeding before a Simpson County jury, Williams was sentenced to fifteen years' imprisonment. On

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

appeal, the sole issue is whether the trial court erred by misstating the context of hybrid representation and, thereby, depriving Williams of his right to self-representation. We affirm.

On September 9, 2003, the Kentucky State Police engaged in an undercover operation attempting to buy crack cocaine in Simpson County, Kentucky. The officer first encountered an individual on the street who directed the officer to pull the car around the corner. Williams then arrived on bicycle and sold the officer a plastic bag of crack cocaine. Williams was indicted for first-degree trafficking in a controlled substance, second or subsequent offense, engaging in organized crime, and for being a first-degree persistent felony offender.

In December 2005, Williams moved to dismiss his counsel, have new counsel appointed, and to serve as co-counsel. The trial court held a hearing on January 18, 2006, where Williams stated that he had not been able to communicate sufficiently with counsel, that there were issues as to the chain of custody, and that he wished to have the drugs independently tested. As the hearing progressed, the trial court noted and Williams agreed that the actual issue was sufficient time to prepare for trial and ultimately granted a continuance. Then the court held a hearing pursuant to *Faretta v. California*, 422 U.S. 806 (1975), and addressed Williams's motion to make a limited waiver of counsel and to serve as co-counsel. The trial court gave a series of warnings about the dangers of relinquishing the

right to counsel and questioned Williams under oath. The hearing concluded with the trial court asking Williams directly if he wished to serve as co-counsel. Williams responded that he no longer wanted to serve as co-counsel once he fully understood the risks.

On May 4, 2006, the issue of a plea bargain was raised on the morning of trial. Williams initially rejected the Commonwealth's offer and restated his dissatisfaction with counsel. After voir dire, the court became aware of Williams's desire to enter a “naked plea” and warned him that he would be sentenced by the jury and not the court. Williams stated that he was not aware that the jury would sentence him. The court continued with the trial and opening arguments were made by both parties. The jury was then dismissed and the court conducted a plea colloquy. Williams admitted that he was guilty of the amended charge of trafficking in a controlled substance, first offense, but would not plead guilty to being a first-degree PFO. The charge of engaging in organized crime was dismissed. The jury sentenced Williams to ten years for the trafficking charge enhanced to a total a fifteen years' imprisonment by the PFO conviction. This appeal followed.

Williams argues that the trial court misstated the context of hybrid representation and essentially dissuaded him from pursuing his right to self-representation. Williams contends that the court went too far in depth in its inquiry as to whether he was capable of representing himself.

In *Hill v. Commonwealth*, 125 S.W.3d 221, 225 (Ky. 2004), the Supreme Court of Kentucky recognized the right to hybrid representation guaranteed by Section 11 of the Kentucky Constitution. Our Supreme Court stated a trial court's *Faretta* duties as follows:

First, the trial court must hold a hearing in which the defendant testifies on the question of whether the waiver is voluntary, knowing, and intelligent. Second, during the hearing, the trial court must warn the defendant of the hazards arising from and the benefits relinquished by waiving counsel. Third, the trial court must make a finding on the record that the waiver is knowing, intelligent, and voluntary.

A waiver of counsel is ineffective unless all three requirements are met.

Id. at 226(internal citations omitted).

The trial court held a *Faretta* hearing at which Williams testified, thus satisfying the first requirement. The court then questioned Williams regarding his education and familiarity with the penal code and rules of evidence. Williams replied that he had read some of the Controlled Substances Act, but was unfamiliar with the Kentucky Rules of Criminal Procedure and Rules of Evidence. Williams also testified that he had never observed a jury trial. The court went on to describe the duties of counsel in conducting a trial such as the presentation of evidence and the questioning of witnesses. The court explained that the risk of tactical and procedural decision-making would fall upon Williams. Williams stated that other inmates at the penitentiary had advised him to move to serve as co-counsel, but had not fully explained the consequences of that action. Finally,

the court asked Williams directly if he wished to serve as a co-counsel. Williams replied in the negative. There was no error in the warnings given to Williams by the trial court. *See Wilson v. Commonwealth*, 836 S.W.2d 872, 882-83 (Ky. 1992), *overruled on other grounds by St. Clair v. Roark*, 10 S.W.3d 482, 487 (Ky. 1999). Our review of the record indicates that the trial court fulfilled its duties under *Hill*, *supra*.

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

ALL CONCUR.

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