

RENDERED: DECEMBER 18, 2009; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2008-CA-001935-MR

JOSHUA PRIDDY

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE R. JEFFREY HINES, JUDGE
ACTION NO. 07-CR-00679

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, MOORE, AND STUMBO, JUDGES.

MOORE, JUDGE: Joshua Priddy appeals the McCracken Circuit Court's judgment convicting him of trafficking in a controlled substance, marijuana, within 1000 yards of a school; use/possession of drug paraphernalia, first offense; and first-degree possession of a controlled substance, cocaine, first offense. After a careful review of the record, we affirm because Priddy's guilty plea was valid.

After Priddy was indicted, the Commonwealth issued an offer to Priddy. Specifically, the Commonwealth's offer provided that if Priddy would enter a guilty plea to the three charges against him, the Commonwealth would recommend that Priddy serve: two and a half years of imprisonment for the charge of trafficking in a controlled substance within 1000 yards of a school; twelve months of imprisonment for the charge of use/possession of drug paraphernalia, first offense; and two and a half years of imprisonment for the charge of first degree possession of a controlled substance, cocaine, first offense. The Commonwealth's offer further provided that it would recommend those sentences be served concurrently for a total of two and a half years of imprisonment.

Priddy moved to enter a guilty plea to the three charges against him. At the beginning of his plea hearing, the video record reveals that defense counsel told Priddy that counsel had misunderstood the Commonwealth's offer and that the possession of cocaine charge was not actually going to be dismissed. Although the conversation between Priddy and defense counsel is largely inaudible from that point to the end of their discussion of the matter, which lasted only about a minute or two, it appears that counsel advised Priddy to enter a guilty plea to the charges involving trafficking and drug paraphernalia, and a plea pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970), for the cocaine possession charge. Defense counsel then informed the court that she had misunderstood the Commonwealth's offer on plea of guilty because she thought that the Commonwealth was going to dismiss the charge of possession of cocaine

in exchange for Priddy's guilty plea but that Priddy was simply going to enter an *Alford* plea to that charge.

Priddy then entered an *Alford* plea to the cocaine possession charge and a guilty plea on the other two charges. Approximately ten days later, Priddy moved to withdraw his guilty plea on the basis that he went into the plea hearing with the understanding that the cocaine possession charge would be dismissed, and once he learned that it would not be dismissed, he contended that he only had fifteen seconds to make a decision about whether he wanted to continue with his guilty plea. Priddy contended in his motion that this was his first experience in court, he was only nineteen years old at the time of his plea hearing, and he had not completed high school. He acknowledged in his motion that he understood his plea, but he "lacked sufficient opportunity to consider his actions and further discuss the matter with counsel." Thus, he alleged that his guilty plea was "neither knowing nor intelligent nor was it freely made given the situational stress."

The circuit court denied Priddy's motion to withdraw his guilty plea after reviewing the record and finding that the guilty plea "was given knowingly and voluntarily without any duress and/or under the influence of any substance that would affect his judgment." The court noted that Priddy "was competent and he demonstrated and had a full awareness of the direct consequences of his plea. There were no misrepresentations to him of any material fact by the Court, the Commonwealth, or his able counsel."

Priddy was sentenced to serve two and a half years of imprisonment on the trafficking charge, twelve months on the use/possession of drug paraphernalia charge, and two and a half years on the cocaine possession charge. All sentences were ordered to run concurrently, but the total sentence was probated for two years.

He now appeals, contending that the circuit court erred in denying his motion to withdraw his guilty plea because his guilty plea was not voluntarily, knowingly, and intelligently entered, as he did not “possess the capability to form a knowing or intelligent plea [decision] within the short time frame of fifteen to twenty seconds” after he discovered that the cocaine possession charge would not be dismissed.

We note that after pleading guilty, a criminal defendant may move the trial court to withdraw the guilty plea, pursuant to RCr^[1] 8.10. If the plea was involuntary, the motion to withdraw it must be granted. However, if it was voluntary, the trial court may, within its discretion, either grant or deny the motion. . . . The trial court’s determination on whether the plea was voluntarily entered is reviewed under the clearly erroneous standard. A decision which is supported by substantial evidence is not clearly erroneous. If, however, the trial court determines that the guilty plea was entered voluntarily, then it may grant or deny the motion to withdraw the plea at its discretion. This decision is reviewed under the abuse of discretion standard. A trial court abuses its discretion when it renders a decision which is arbitrary, unreasonable, unfair, or unsupported by legal principles.

¹ Kentucky Rule of Criminal Procedure.

Rigdon v. Commonwealth, 144 S.W.3d 283, 288 (Ky. App. 2004) (internal quotation marks and citations omitted).

Upon review of the video record of the plea hearing in this case, it is apparent that before Priddy's plea colloquy began, defense counsel gave him the motion to enter a plea of guilty form for him to sign. He signed it, and she then noticed that the form did not provide for the cocaine possession charge to be dismissed. She asked the Commonwealth's Attorney about it, and the two of them discussed the issue. Defense counsel then informed Priddy that the Commonwealth was recommending that the sentences be run concurrent, so that his total sentence would be no different than it would have been if the cocaine possession charge had been dismissed.

Priddy acknowledged to the circuit court that he had read the Commonwealth's Offer on a Guilty Plea and the Motion to Enter a Guilty Plea and signed those documents. After the misunderstanding regarding the dismissal of the cocaine possession charge was explained to the court during the hearing, the court was informed that Priddy would be entering an *Alford* plea regarding that charge. Priddy admitted to the court that he was guilty of the charges against him; that he and defense counsel had gone over the list of constitutional rights that he was waiving by pleading guilty; and that he understood by pleading guilty he could be sentenced to ten years in prison, but that the Commonwealth had recommended two and a half years, and that the court was not bound by the plea agreement. Priddy also acknowledged that if the court decided to sentence him to something

other than what the Commonwealth had recommended, he would have a right to withdraw his guilty plea.

Priddy pleaded guilty to the charges of trafficking and use/possession of drug paraphernalia, and he entered an *Alford* plea to the cocaine possession charge. He acknowledged that he was entering his plea freely, willingly, voluntarily, knowingly, and intelligently. Defense counsel informed the court that she had gone over Priddy's plea documents with him, and that she believed his plea was freely, willingly, voluntarily, knowingly, and intelligently entered. She also stated that she had no reason to believe that Priddy was under the influence of alcohol or drugs or that he suffered from mental illness or any other affliction that would affect his judgment.

The Kentucky Supreme Court has "recognize[d] that a defendant who expressly represents in open court that his guilty plea is voluntary may not ordinarily repudiate his statements to the sentencing judge." *Edmonds v. Commonwealth*, 189 S.W.3d 558, 568 (Ky. 2006) (internal quotation marks omitted). As previously mentioned, Priddy acknowledged in open court during his plea colloquy that his plea was entered voluntarily.

Based on the various aforementioned admissions by Priddy and his defense counsel during the plea colloquy, we find that there was substantial evidence to support the circuit court's finding that Priddy's guilty plea was voluntarily entered and, thus, the circuit court did not err in that finding.

Furthermore, the circuit court did not abuse its discretion in denying Priddy's motion to withdraw his guilty plea.

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

DIXON, JUDGE, CONCURS.

STUMBO, JUDGE, DISSENTS AND FILES SEPARATE OPINION.

STUMBO, JUDGE, DISSENTING: Respectfully, I must dissent.

The Commonwealth does not dispute that Appellant was misinformed by counsel in regard to the terms of the plea. It appears from the record that the sentencing hearing lasted three minutes and twenty-seven seconds, including Appellant's consultation with his attorney once she had determined that the possession charge was not dismissed as part of the deal. Appellant contends that he was not informed of the consequences of pleading to possession of cocaine or what an *Alford* plea meant. Neither issue can be resolved based on less than three and one-half minutes of recorded court proceedings. *Rigdon v. Commonwealth*, 144 S.W. 3d 283 (Ky. App. 2004), requires a hearing in circumstances such as this. I would reverse and remand for an evidentiary hearing on the voluntariness of the plea.

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