

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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-000486-MR

CLINTON EARL SIMMONS

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT
HONORABLE THOMAS O. CASTLEN, JUDGE
ACTION NO. 08-CR-00362

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, MOORE, AND STUMBO, JUDGES.

MOORE, JUDGE: Clinton Earl Simmons appeals from the Daviess Circuit Court's judgment convicting him of third-degree burglary and of being a first-degree persistent felony offender (PFO-1st). After a careful review of the record, we affirm because the circuit court did not err in failing to hold a competency hearing and because Simmons's guilty plea was valid.

I. FACTUAL AND PROCEDURAL BACKGROUND

Simmons was indicted on the charges of third-degree burglary and PFO-1st due to his involvement in the theft of numerous catalytic converters from a scrap metal business. According to Simmons, one of his prior convictions that was used as an element to support his PFO charge was a burglary he had committed at the home of a friend of the Commonwealth's Attorney who was prosecuting Simmons in the present case. The Commonwealth's Attorney was Bruce E. Kuegel, and Simmons alleges that Kuegel was the Kentucky State Trooper who had investigated that prior offense in the 1980s.

Simmons did not see Kuegel through the course of his various pre-trial proceedings. Rather, the first time he saw Kuegel in the present case was on the date that trial was scheduled to begin. On that date, Simmons moved to enter a guilty plea. The Commonwealth's written Offer on a Plea of Guilty recommended that Simmons be sentenced to five years of imprisonment for the third-degree burglary conviction, and to fifteen years of imprisonment for the PFO-1st conviction. The Commonwealth further recommended that the fifteen-year-sentence "be served in lieu of the 5 year sentence."

A plea hearing was held, during which the circuit court asked Simmons if he was completely satisfied with the services and advice from his attorney, and he responded in the affirmative. He was also asked if he was satisfied that his attorney had done everything he could legally, ethically, and morally in his defense, and Simmons responded in the affirmative. Simmons was

asked if he had been diagnosed with a mental disease or defect that would affect his ability to think, reason, or make an informed decision at that time, and Simmons responded in the negative. He was further asked if he fully comprehended that he was pleading guilty and accepting the terms and conditions set forth by the Commonwealth in its Offer on a Plea of Guilty, to which he responded in the affirmative. Simmons stated that no one had threatened or coerced him into pleading guilty. Following further questioning to ensure that Simmons understood the consequences of his guilty plea, including the rights he was waiving by pleading guilty, the circuit court accepted Simmons's plea.

Prior to sentencing, Simmons's attorney moved, on Simmons's behalf, for a change of venue, appointment of a special prosecutor, appointment of a special judge, and appointment of new defense counsel. According to Simmons's appellate brief, defense counsel informed the court that Simmons "had accused [defense counsel] of colluding against [Simmons] with Mr. Kuegel." The circuit court permitted defense counsel to withdraw as Simmons's counsel. Simmons told the court that he believed Kuegel was still angry with him for having broken into the home of Kuegel's friend, and Simmons contended that his defense counsel should have moved to have Kuegel removed as the prosecutor in the case. When the court asked why Simmons had not made this allegation during his plea hearing, Simmons said his defense counsel had told him it did not matter that Kuegel was the arresting officer when he was charged with his prior offense because Kuegel had told defense counsel that he did not remember the prior crime.

Kuegel then informed the court that he did not remember arresting Simmons at the time that defense counsel mentioned it to him, but after the plea hearing, Kuegel looked up Simmons's prior offense file and saw that he had been the arresting officer in that prior case in 1983. Kuegel assured the court that he did not remember the case until he looked it up after the plea offer was made and that his involvement in Simmons's prior case had no effect on the plea offer provided to Simmons. Kuegel informed the court that he was not involved in reviewing Simmons's current case prior to the plea offer being made and that an Assistant Commonwealth's Attorney had reviewed the case and negotiated the plea offer. Kuegel also noted that the reason the recommended sentence in the Commonwealth's plea offer increased was because Simmons did not enter his guilty plea until the day of trial, with the jury waiting outside the courtroom. The circuit court permitted defense counsel to withdraw from the case, and another attorney was retained for Simmons by the Department of Public Advocacy as conflict counsel. The court did not rule upon Simmons's other motions at that time.

Several weeks later, with the assistance of his new defense counsel and before a different circuit court judge, Simmons moved to withdraw his guilty plea and moved for a psychiatric evaluation to determine his competency. Simmons's basis for his motion was that his paranoia about Kuegel being biased against him had led to a breakdown in his relationship with his former counsel.

A hearing was held on Simmons's motion to withdraw his guilty plea. Simmons testified, alleging that the Commonwealth had originally offered him a plea deal of ten years of imprisonment, but his original defense counsel told him that he would get a better offer. Simmons attested that on the day of trial, his defense counsel told him that the offer had increased to fifteen years because Kuegel "had it out for him." Simmons allegedly then told his original defense counsel that Kuegel had been the arresting officer during his prior arrest and Simmons had beaten up Kuegel's brother in school years earlier. Therefore, Simmons wanted a different prosecutor. Simmons attested that he asked his initial defense counsel to move to withdraw his plea, but counsel refused to do so. When he was asked why he thought a psychiatric evaluation was necessary, Simmons said that he should be evaluated because he thought everyone was conspiring against him.

The circuit court found the evidence of Simmons's incompetency to be non-existent and stated that there was no authority before the court to authorize a competency evaluation after Simmons's guilty plea was entered. The court also noted that Simmons told the court at the time his plea was entered that he was competent. The circuit court noted that the only evidence before the court concerning Simmons's request for a psychiatric evaluation was Simmons's statement that he thought everyone was against him. The court reviewed the videotape of Simmons's plea colloquy and found that his guilty plea was entered knowingly, intelligently, and voluntarily. Thus, the circuit court denied

Simmons's motion to withdraw his guilty plea, denied his motion for a psychiatric evaluation, and denied his motion for a special prosecutor as moot. Simmons was then sentenced to fifteen years of imprisonment.

Simmons now appeals, contending that the trial court erred: (a) in failing to order a competency evaluation; and (b) in denying his motion to withdraw his guilty plea.

II. ANALYSIS

A. CLAIM REGARDING COMPETENCY EVALUATION

Simmons first claims that the circuit court erred in failing to order a competency evaluation because he was paranoid and thought everyone was plotting against him. Pursuant to Kentucky Revised Statutes (KRS) 504.090, “[n]o defendant who is incompetent to stand trial shall be tried, convicted or sentenced so long as the incompetency continues.” Additionally, KRS 504.100 provides:

(1) If upon arraignment, or during any stage of the proceedings, the court has reasonable grounds to believe the defendant is incompetent to stand trial, the court shall appoint at least one (1) psychologist or psychiatrist to examine, treat and report on the defendant's mental condition.

In *Bishop v. Caudill*, 118 S.W.3d 159 (Ky. 2003), the Kentucky Supreme Court noted that in *Godinez v. Moran*, 509 U.S. 389, 396, 113 S. Ct. 2680, 2685, 125 L.Ed.2d 321 (1993),

the United States Supreme Court held that a defendant is competent if he can “consult with his lawyer with a reasonable degree of rational understanding” and has “a rational as well as factual understanding of the

proceedings against him.” The Court noted that a competent defendant can make a “reasoned choice” among the alternatives available to him when confronted with such crucial questions as whether he should testify, waive a jury trial, cross-examine witnesses, put on a defense, etc.

Bishop, 118 S.W.3d at 162-63 (quoting *Godinez*, 509 U.S. at 397-98, 113 S. Ct. at 2686).

In a competency determination, there are two matters for a court to examine:

(1) whether the defendant is sufficiently coherent to provide his counsel with information necessary or relevant to constructing a defense; and

(2) whether he is able to comprehend the significance of the trial and his relation to it. The defendant must have an ability to confer intelligently, to testify coherently, and to follow the evidence presented. It is necessary that the defendant have a rational as well as a factual understanding of the proceedings.

Would defendant recognize false testimony by a witness and would he know to advise counsel of that fact? Does he understand the roles of trial participants (i.e., that the prosecutor is his adversary, that the judge decides his fate, that his counsel acts in his best interest, etc.)? Does he understand that convictions will result in sanctions? The inquiry is a factual one that necessarily depends upon the peculiar facts and circumstances of the case.

Id. at 163 (internal quotation marks omitted).

In the present case, the only reason Simmons alleged in support of his request for a competency evaluation was that he thought everyone was plotting against him. Upon review of his plea hearing, it is apparent that he understood the

significance of his plea hearing and his relationship to the proceedings. In fact, Simmons explained to the court his actions in furtherance of the burglary with which he was charged.

Simmons also agreed during his plea hearing that he was completely satisfied with the services and advice from his attorney, and that he was satisfied his attorney had done everything he could legally, ethically, and morally in Simmons's defense. During his plea hearing, Simmons denied ever having been diagnosed with a mental disease or defect that would affect his ability to think, reason, or make an informed decision. Simmons acknowledged that he fully comprehended that he was pleading guilty and accepting the terms and conditions set forth by the Commonwealth in its Offer on a Plea of Guilty. Simmons also stated that no one had threatened or coerced him into pleading guilty.

Consequently, because Simmons provided no evidence that would lead the circuit court to reasonably doubt his competency and because Simmons appeared to understand the proceedings during his plea hearing and he told the court that he had never suffered from a mental disease or defect, we find that the circuit court did not err in denying Simmons's request for a competency evaluation. *See Jones v. Commonwealth*, 260 S.W.3d 355, 360 (Ky. App. 2008).

B. CLAIM REGARDING DENIAL OF MOTION TO WITHDRAW GUILTY PLEA

Simmons next claims that the circuit court should have granted his motion to withdraw his guilty plea because he did not know until the day of the

plea hearing that Kuegel was the prosecutor in the case and because he asked his initial defense counsel to file a motion to have Kuegel removed as the prosecutor, but counsel refused.

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.

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

In the present case, Simmons was aware that Kuegel was the prosecutor present for his plea hearing before Simmons entered his guilty plea, but he did not mention his past experiences with Kuegel or the alleged bias that Kuegel had against Simmons when he had the opportunity to do so during his plea hearing.

Additionally, during the plea hearing, the circuit court discussed with Simmons in detail the constitutional rights that he was waiving by pleading guilty, and Simmons acknowledged that he understood he was waiving those rights.

¹ Kentucky Rule(s) of Criminal Procedure.

Simmons also admitted at that hearing that he was satisfied with the services and advice he received from his defense counsel. He told the court that he did not have any mental illness or defect that would affect his ability to think, reason, or make an informed decision at that time, and he stated that he fully comprehended that he was pleading guilty and accepting the terms and conditions set forth by the Commonwealth in its Offer on a Plea of Guilty. Simmons also acknowledged that no one had threatened or coerced him into pleading guilty.

Consequently, because there was substantial evidence supporting the circuit court's finding that Simmons's guilty plea was entered voluntarily, the court did not clearly err in that finding. Furthermore, the circuit court did not abuse its discretion when it denied Simmons's motion to withdraw his guilty plea.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

Linda Roberts Horsman
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General
Frankfort, Kentucky

John Paul Varo
Assistant Attorney General
Frankfort, Kentucky