

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-000308-DG

P.A., A CHILD UNDER
EIGHTEEN

APPELLANT

ON DISCRETIONARY REVIEW FROM BOURBON CIRCUIT COURT
v. HONORABLE ROBERT G. JOHNSON, JUDGE
ACTION NO. 09-XX-00004

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, COMBS, AND KELLER, JUDGES.

KELLER, JUDGE: P.A. appeals from the circuit court's opinion and order affirming the district court's disposition of criminal charges to which he pled guilty. On appeal, P.A. argues he was not competent to enter a guilty plea and that he did not knowingly, voluntarily, and intelligently do so. Having reviewed the record, we disagree and affirm.

FACTS

As a result of three incidents at school in late 2008 and early 2009, P.A., who was thirteen at the time, was charged with three counts of third-degree assault and two counts of third-degree criminal mischief in Woodford County. On March 11, 2009, the Commonwealth's Attorney agreed to amend the felony third-degree assault charges to misdemeanor fourth-degree assault charges in exchange for a plea of guilty. Counsel initially indicated that P.A. wanted to proceed to trial; however, when counsel asked P.A. if that is what he wanted to do, P.A. said that he wanted to plead guilty. Following a discussion with the court and the Commonwealth's Attorney, defense counsel took P.A. out of the courtroom to explain the charges to him. Approximately six minutes later, counsel returned to the courtroom and stated that P.A. intended to plead guilty. The district court judge then explained the following to P.A.:

[Y]ou understand that you are entitled to demand a trial. And, throughout these proceedings you are entitled to have an attorney represent you, to present your evidence in your defense, to question people called on the other side of your case, um, to appeal to a higher court, and to have me order people to appear to testify for you. Now, do you understand that that right to trial, that is yours and yours alone? That you give that up if you plead guilty, do you understand that?

P.A. stated that he understood. The judge then reviewed each of the charges with P.A., and P.A. admitted to each of the charges. The court then transferred the matter to Bourbon County District Court for disposition.¹

¹ Although it is not clear from the record, it appears that P.A.'s case was transferred because P.A. had previously been committed to the Cabinet for Families and Children (CFC) in Bourbon County. Therefore, the pre-disposition investigation would be conducted by CFC personnel in

At the disposition hearing, P.A.'s counsel argued that P.A. could not have knowingly, intelligently, and voluntarily entered guilty pleas because of his age and his history of treatment for mental health issues. However, counsel did not specifically state how P.A.'s mental health issues impaired his ability to competently plead. The court stated that any motions with regard to the pleas should have been made in Woodford County, where the pleas were made. The court then followed the recommendation in the predisposition investigation report and committed P.A. to the Department of Juvenile Justice. P.A. then filed this appeal.

STANDARD OF REVIEW

The issues presented by P.A. have different standards of review, which we set forth when analyzing each issue.

ANALYSIS

1. Competency

The standard of appellate review of a trial court's competency decision is “[w]hether a reasonable judge, situated as was the trial court judge whose failure to conduct an evidentiary hearing is being reviewed, should have experienced doubt with respect to competency to stand trial.” *Turner v. Commonwealth*, 153 S.W.3d 823, 832 (Ky. 2005) (quoting *Thompson v. Commonwealth*, 56 S.W.3d 406, 408 (Ky. 2001)). “[T]he standard of competency is whether the defendant has a substantial capacity to comprehend the nature and consequences of the proceedings

Bourbon County.

against him and to participate rationally in his defense." *Alley v. Commonwealth*, 160 S.W.3d 736, 739 (Ky. 2005). If, at any time during 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." Kentucky Revised Statute (KRS) 504.100(1).

P.A. argues that his age and the information contained in his predisposition investigation report were sufficient to compel the court to order a competency evaluation. We disagree.

P.A.'s predisposition investigation report indicates he had behavior problems dating back several years; he had received treatment for those problems at several facilities; and he had been diagnosed with "Mood Disorder NOS, ODD, Rule Out Conduct Disorder." These diagnoses and P.A.'s treatment history indicate that he has difficulty controlling his behavior; however, they do not indicate that he lacked the capacity to understand the nature and consequences of the proceedings against him. As noted by the circuit court, P.A. acknowledged during a pre-admission hearing that he understood he needed to control his behavior in the future. Furthermore, personnel from the Cabinet, the juvenile detention center, and P.A.'s group home indicated that P.A.'s behavior had improved somewhat throughout the course of the proceedings. Finally, just prior to P.A.'s admission of guilt, his attorney stated that he had explained each of the charges to P.A. and that P.A. would admit his guilt in exchange for the plea agreement offered by the

Commonwealth. The attorney did not indicate that P.A. had any difficulty understanding the charges, the plea agreement, or the proceedings. Based on the preceding, we discern no error in the court's finding that no reasonable grounds existed for it to believe P.A. was incompetent to enter the guilty pleas in question.

2. Validity of Guilty Pleas

The test for determining the validity of a plea is whether the plea is a voluntary and intelligent choice among the alternative courses of action open to the defendant. *Sparks v. Commonwealth*, 721 S.W.2d 726, 727 (Ky. App. 1986) (citing *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 164, 27 L. Ed. 2d 162 (1970)). Inquiry into the voluntariness of a plea is fact sensitive and the trial court will only be reversed if its decision was clearly erroneous. *Edmonds v. Commonwealth*, 189 S.W. 3d 558, 570 (Ky. 2006).

P.A. argues that the district court did not adequately determine whether he voluntarily, knowingly, and intelligently admitted to the amended charges. Specifically, P.A. argues that the court should have, but did not, inquire whether any promises had been made or if he was under duress; whether he was taking any medication or suffering from any mental illness that might impact his plea; whether he could read; what grades he received; whether he had sufficient time to consult with counsel; and what potential dispositions existed. While we agree with P.A. that these inquiries might be appropriate, we hold that they were not mandatory in this case.

The validity of a guilty plea must be determined not from specific key words uttered at the time the plea was taken, but from considering the totality of circumstances surrounding the plea. These circumstances include the accused's demeanor, background and experience, and whether the record reveals that the plea was voluntarily made.

D.R. v. Commonwealth, 64 S.W.3d 292, 294 (Ky. App. 2001) (internal citations omitted).

As previously noted, the district court undertook the following colloquy prior to accepting P.A.'s guilty plea:

Judge: And, [P.A.], you understand that you are entitled to demand a trial. And, throughout these proceedings you are entitled to have an attorney represent you, to present your evidence in your defense, to question people called on the other side of your case, um, to appeal to a higher court, and to have me order people to appear to testify for you. Now, do you understand that that right to trial, that is yours and yours alone? That you give that up if you plead guilty, do you understand that?

P.A.: Yes, ma'am.

Furthermore, the court observed and interacted with P.A. and his case worker from CFC; P.A.'s attorney stated that he explained all of the charges to P.A.; and the court went through each of those charges with P.A. Taking all of the circumstances into consideration, we agree with the circuit court that P.A.'s admissions were knowingly, voluntarily, and intelligently made and valid.

CONCLUSION

Because P.A.'s pleas were knowingly, voluntarily, and intelligently made and because there was no evidence that P.A. was incompetent to enter those pleas, we affirm.

ALL CONCUR.

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