

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-001009-MR

APRIL LYNN MOUNCE

APPELLANT

v. APPEAL FROM PULASKI CIRCUIT COURT
HONORABLE JEFFREY T. BURDETTE, JUDGE
ACTION NO. 07-CR-00243

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, DIXON, AND WINE, JUDGES.

CLAYTON, JUDGE: This is an appeal of the imposing of a sentence after a guilty plea. Based upon the following, we affirm the decision of the trial court.

BACKGROUND INFORMATION

On September 20, 2007, appellant April Mounce, pled guilty to one count of Complicity to Trafficking in a Controlled Substance in the First Degree in Pulaski Circuit Court. Mounce had entered into a plea agreement with the Commonwealth which provided that in exchange for the recommendation by the Commonwealth that she receive probation, she would cooperate with an investigation, stay out of trouble and not obtain any new criminal charges.

The Commonwealth contends that, prior to sentencing, Mounce violated the conditions of her plea agreement and, as a result, on January 17, 2008, the Commonwealth informed the trial court that it was going to withdraw the recommendation of probation based upon its allegation that Mounce had failed to provide truthful information and that she had possibly been using illegal drugs while awaiting sentencing. The Commonwealth requested a drug test on Mounce.

A hearing was conducted at which the drug test results were presented to the court and the court determined that Mounce had violated the conditions of her plea agreement. The court gave the Commonwealth leave to withdraw its motion for probation and also denied Mounce's motion to withdraw her guilty plea. Mounce was then sentenced by the trial court to ten years' imprisonment.

Mounce filed an appeal with this Court after her ten-year sentence was imposed. She was represented by counsel and dismissed her appeal after entering into an agreement with the Commonwealth as follows:

I understand that the Commonwealth has offered to settle my case. In exchange for my agreement to dismiss my appeal, the Commonwealth has agreed to recommend that the court amend my sentence to ten years in prison, probated for five years, with the standard package of probation conditions. I have discussed the pros and cons of the Commonwealth's offer with my attorney, Jamesa J. Drake. I understand that if I accept the offer and dismiss my appeal, and then violate any of the conditions of my probation, I will serve ten years in prison (minus the time that I have already served). I understand the risks that are involved in accepting the Commonwealth's offer.

I will agree to dismiss my appeal in exchange for the Commonwealth's agreement to ask the trial court to amend my sentence to ten years in prison, probated to five years.

Mounce then brought this appeal. She also filed several Kentucky Rules of Civil Procedure (CR) 60.02 motions with the trial court, all of which were denied.

STANDARD OF REVIEW

Whether a criminal defendant has knowingly and intelligently waived his or her fundamental rights by pleading guilty is a question of law as such is a fundamental constitutionally protected right. *Brewer v. Williams*, 430 U.S. 387, 403, 97 S. Ct. 1232, 1242, 51 L. Ed. 2d 424 (1977). Questions of law are subject to *de novo* review. *Western Kentucky Coca-Cola Bottling Co., Inc. v. Revenue Cabinet*, 80 S.W.3d 787, 790 (Ky. App. 2001).

DISCUSSION

Mounce argues that she did not knowingly and intelligently waive any of her fundamental constitutional rights. While she agrees that she was acting voluntarily, she argues that one can do so and still not enter a plea knowingly and intelligently. *Schneckloth v. Bustamonte*, 412 U.S. 218, 238 n. 25, 93 S. Ct. 2041, 2053, 36 L. Ed 2d 854 (1973). The Commonwealth, however, points to the fact that Mounce, with the assistance of counsel, agreed to refrain from filing an appeal based upon her guilty plea and waiver of indictment. While Mounce now contends that her original guilty plea was not entered into knowingly and intelligently (but was voluntary), any such argument would clearly be a nullity given that she was represented by counsel when she agreed to drop her appeal. Mounce cannot now argue that her original plea was not knowingly and intelligently entered. Thus, we affirm the entry of the sentence by the trial court and dismiss Mounce's appeal.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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