

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-002234-MR

WILLIAM JOHNSON

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE MARTIN J. SHEEHAN, JUDGE
ACTION NO. 11-CR-00339

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, LAMBERT AND NICKELL, JUDGES.

NICKELL, JUDGE: William Johnson appeals from the November 14, 2011, judgment of the Kenton Circuit Court convicting him of three counts of robbery in the first degree¹ and sentencing him to a total of twelve years' imprisonment. Johnson alleges the trial court erred in refusing to permit him to withdraw his

¹ Kentucky Revised Statutes (KRS) 515.020, a Class B felony.

guilty plea and proceed to trial. Following a careful review of the record, we affirm.

Johnson and another man conspired to commit a robbery. Pursuant to their plan, they entered a residence and took personal property from three individuals. The man accompanying Johnson was armed with a handgun during the thefts and threatened the individuals being robbed and children who were present in the home. On May 19, 2011, both Johnson and his co-conspirator were indicted for one count of burglary in the first degree² and three counts of robbery in the first degree.³

The Commonwealth made a plea offer to Johnson wherein it set forth the underlying facts of the charged crimes, agreed to dismiss the burglary charge, and recommended a prison sentence of twelve years on each count to be served concurrently. Johnson would be free to argue for a lesser sentence. Based on this offer, Johnson decided to plead guilty. He appeared in open court with counsel on August 29, 2011, to enter his plea. The trial court conducted a thorough plea colloquy in which it was established Johnson understood the charges against him and had conferred with his counsel regarding the charges, possible defenses, and penalties. Johnson stated he had read the motion to enter a guilty plea, understood its contents and the rights he was giving up by entering a plea, he was satisfied

² KRS 511.020, a Class B felony.

³ Superseding indictments added two additional co-defendants but did not change the charges levied against Johnson.

with the advice counsel had given him, and he was not confused by the proceedings. Johnson affirmed he did not suffer from any mental illness and was not under the influence of any drugs that would affect his judgment. He acknowledged his signature on the motion to enter a guilty plea and indicated he had not been promised any other benefit apart from the terms of the plea agreement. He said his plea was not the result of force, threats or coercion.

Johnson admitted he had committed the crimes charged. When asked by the trial court what had transpired, Johnson said, “Sir, I set it up and I helped another man basically rob our roommates.” Counsel indicated to the court that Johnson was liable as a complicitor. Johnson admitted he had entered a residence with the intent of taking property that did not belong to him, someone was armed with a handgun, and property was, in fact, taken. Based on the plea colloquy, the trial court accepted Johnson’s plea as being knowingly, voluntarily and intelligently given. Final sentencing was postponed for the preparation of a presentence investigation (“PSI”) report.

On October 11, 2011, Johnson filed a motion to withdraw his guilty plea pursuant to RCr⁴ 8.10. No grounds for the motion were set forth. At a hearing two days later, counsel informed the trial court the motion had been filed at Johnson’s request. Counsel made no argument on Johnson’s behalf, instead requesting that Johnson be permitted to address the court.

⁴ Kentucky Rules of Criminal Procedure.

Johnson informed the trial court he had understood he was pleading guilty to “facilitation” and not to “complicity” because he “never robbed nobody, sir.” The trial court went through the matters which were discussed during the plea colloquy including the charges as they were originally brought and as amended, accompanied by the penalties for the charges. The trial court declared it would not have accepted a plea if it was not satisfied the plea was knowing, voluntary and intelligent, and reiterated that “it’s pretty clear that you knew at the time what you were pleading guilty to.” Johnson again stated he “never robbed nobody.” The trial court found Johnson had previously indicated he was guilty of robbery in the first degree, no mention had been made of facilitation, and no representations had been made other than those contained in the plea offer. Johnson replied that he “wasn’t in the right state of mind, sir.” In response, the trial court indicated it had fully inquired of Johnson about his mental state and if it had “any inkling” Johnson did not possess all of his mental faculties, no plea would have been accepted.

The court indicated its belief Johnson simply no longer wanted to go forward with the plea agreement. It found such a change of heart was an insufficient reason to permit Johnson to withdraw his plea. Finding no sufficient legal basis to permit withdrawal of the guilty plea, the motion was denied. Final sentencing was scheduled for a later date.

On November 8, 2011, Johnson appeared with counsel for sentencing. The trial court indicated the PSI was vague based on Johnson’s refusal to cooperate in its preparation. The court also noted Johnson had “shredded” the PSI and victim

impact statement when they had been presented to him for review. Johnson indicated his continuing desire to withdraw his guilty plea and proceed to trial. The trial court indicated the motion had previously been denied and Johnson had presented no legal basis for permitting withdrawal. Counsel's request for leniency and a shorter sentence were likewise rejected. The trial court followed the terms of the plea agreement and sentenced Johnson to serve twelve years' imprisonment. This appeal followed.

Johnson contends the trial court erred in failing to conduct a "substantive evidentiary hearing on his motion to withdraw the guilty plea." Johnson alleges his plea was involuntary and thus, he should have been permitted to withdraw the plea and proceed to trial. He believes the brief discussion of the matter was insufficient to determine the voluntariness of his plea under the totality of the circumstances. Therefore, he argues the trial court abused its discretion in overruling his request. We disagree.

Withdrawal of a voluntarily entered guilty plea is within the trial court's discretion. RCr 8.10. When we consider the totality of the circumstances, as required by *Kotas v. Commonwealth*, 565 S.W.2d 445, 447 (Ky. 1978) and *Edmonds v. Commonwealth*, 189 S.W.3d 558, 566 (Ky. 2006), we see a convicted felon⁵ who was indicted for a crime he admitted planning with his co-defendants. He was represented by counsel with whom he stated he was satisfied. In addition to explaining the charges, penalties and potential defenses to Johnson, counsel also

⁵ Johnson had previously been convicted of robbery in Ohio.

discussed with him his options. He could go to trial or he could plead guilty. After weighing his limited options, Johnson chose to enter a guilty plea. He signed documents expressing his intention to plead guilty; he knowingly waived his constitutional rights; and when asked, told the court he had no questions. Included in the motion to enter a guilty plea was the statement, “Because I am guilty and make no claim of innocence, I wish to plead ‘GUILTY’ in reliance on the attached ‘Commonwealth’s Offer on a Plea of Guilty.’” The motion to enter a guilty plea also includes an affirmation that the plea is knowingly, intelligently and voluntarily made. Thereafter, the trial court accepted Johnson’s guilty plea and found it to be knowingly entered following a lengthy plea colloquy. As the date for final sentencing neared, Johnson apparently changed his mind and asked the court to allow him to withdraw his guilty plea. However, neither of the reasons he gave persuaded the trial court his previously entered guilty plea was made involuntarily. Based upon the totality of the circumstances, we cannot say the trial court committed clear error in finding Johnson’s guilty plea to have been validly entered or that the trial court abused its discretion in overruling the motion to withdraw the guilty plea.

For the foregoing reasons, the judgment of the Kenton Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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