

RENDERED: JULY 26, 2013; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-000323-MR
AND
NO. 2012-CA-000324-MR

SHANE PURVIS

APPELLANT

v.

APPEAL FROM LAUREL CIRCUIT COURT
HONORABLE JOHN KNOX MILLS, JUDGE
ACTION NO. 11-CR-00010 AND 11-CR-00049

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, LAMBERT, AND VANMETER, JUDGES.

CLAYTON, JUDGE: This is an appeal from a motion to withdraw the entry of a guilty plea in Laurel County Circuit Court. Based upon the following, we affirm.

BACKGROUND INFORMATION

The Appellant, Shane Purvis, was indicted in two separate cases for two counts of first-degree robbery in January of 2011. These incidents occurred on

different dates and in different places within Laurel County. He was also charged with one count of theft by unlawful taking (TBUT) over \$500. Purvis was appointed counsel to represent him on the cases. A week before his trial was scheduled, Purvis appeared before the Laurel Circuit Court with his appointed counsel at which time his counsel informed the trial court and the Commonwealth that Purvis had rejected the plea agreement which had been offered. A hearing was scheduled at this time on a suppression motion.

The following week and one day prior to the scheduled trial, Purvis and his counsel appeared before the trial court. Purvis asserted that he did not wish to enter a guilty plea and that he was unhappy with his court appointed counsel. He stated before the trial court that his counsel had not obtained statements from witnesses as he requested and that counsel could not be sure they would be ready for trial. Purvis's counsel explained to the trial court that, while she had requested a witness list from Purvis when she was first appointed to represent him, she had not received the list until a week prior to the trial date. She stated that her investigator was trying to locate the witnesses she had been given, but she did not know if he would be able to prior to trial.

The trial court then asked Purvis why he was unhappy with his appointed counsel. Purvis stated that he and his counsel had not been able to communicate well and that he was not ready for trial. Purvis's counsel stated that she was prepared to go to trial. Purvis also asserted that DNA evidence had not been shared; however, it was determined that the DNA found on a cigarette in the

woods near the scene was not Purvis's and, therefore, would not be used at trial. The trial court then denied Purvis's request for new counsel, finding that his appointed counsel was not ineffective and that there was no conflict.

Later that same day, Purvis appeared before the trial court again and entered a guilty plea wherein he pled guilty to the charges in exchange for the Commonwealth's recommendation that he serve thirteen years. The trial court accepted his guilty plea and provided the necessary colloquy to determine that Purvis's plea was being entered into knowingly, voluntarily and intelligently.

Prior to final sentencing, Purvis filed a motion to withdraw his plea of guilty and the trial court held a hearing on the motion on October 21, 2011. At this hearing, Purvis requested conflict counsel to represent him at the hearing on his motion asserting that it should proceed as though he had filed a Kentucky Rules of Criminal Procedure (RCr) 11.42. The trial court agreed and ordered the Department of Public Advocacy (DPA) to provide conflict counsel. DPA did not assign counsel until January of 2012, after the trial court ordered Edward Monohan, the Public Advocate, to show cause why he should not be held in contempt for failing to appoint conflict counsel for Purvis.

On January 20, 2012, a hearing on Purvis's motion to withdraw his plea was held at which the trial court denied his motion. On January 26, 2012, the trial court sentenced Purvis according to the terms of the plea agreement and Purvis filed this appeal.

STANDARD OF REVIEW

In his appeal, Purvis contends that his entry of a guilty plea was involuntary due to the ineffective assistance of his trial counsel. In reviewing the voluntariness of a plea and the trial court's decision to deny a motion to withdraw, we must determine whether there was substantial evidence to support the finding that it was voluntary. It is, therefore, reviewed for clear error. *Edmonds v. Commonwealth*, 189 S.W. 3d 558,566 (Ky. 2006). We must determine whether the denial was an abuse of discretion. A court abuses its discretion when it renders a decision that is arbitrary, unreasonable, unfair, or unsupported by legal principles. *Id* at p. 570.

With this standard in mind, we review the trial court's decision and Purvis's arguments.

DISCUSSION

Purvis contends that his case should be reversed for a substantive evidentiary hearing on his motion to withdraw the guilty plea. He argues that, pursuant to Kentucky law, “[a]t any time before judgment the court may permit the plea of guilty or guilty but mentally ill, to be withdrawn and a plea of not guilty substituted.” RCr 8.10. He asserts that whether a plea is valid requires a factual inquiry based on the totality of the circumstances and if the plea is involuntary, the trial court must grant a defendant's motion to withdraw it. *Edmonds v. Commonwealth*, at 566.

In *Rigdon v. Commonwealth*, 144 S.W. 3d283, 290 (Ky. App. 2004), a panel of our court held that:

Once [a defendant] raised a particularized claim of ineffective assistance of counsel, the circuit court needed to look beyond the plea colloquy to determine whether his plea was voluntarily entered under the totality of the circumstances surrounding his plea.

The *Rigdon* court went on to opine that while a full scale evidentiary hearing is preferred, an informal proceeding where the defendant and his counsel testified under oath about the claim of ineffective assistance is sufficient where the appellate court could review the proceedings. *Id.* at p. 291 (citing *Rodriguez v. Commonwealth*, 87 S.W.3d 8, 11 (Ky. 2002)).

Purvis argues that he did not receive an adequate hearing under *Rigdon*. He asserts that both the Kentucky Supreme Court and the Department of Public Advocacy require defense counsel to provide conflict counsel with case files once allegations of ineffectiveness are raised. The trial court did provide conflict counsel by ordering the Department of Public Advocacy to assign counsel to Purvis. When it had not done so, the trial court brought Monohan before it to show cause why he should not be held in contempt for failing to provide conflict counsel for Purvis. At that point, the DPA appointed counsel.

On January 20, 2010, the trial court held a hearing at which Purvis and his conflict counsel were present. Purvis only called his prior counsel to testify at the hearing. After the hearing, the trial court stated that it had reviewed the colloquy of the guilty plea, the arraignment, the competency evaluation, and weighed the testimony at the hearing and determined that Purvis's plea was knowingly, intelligently and voluntarily entered. We find this to be sufficient.

The plea colloquy was thorough and the trial court asked specific questions which went to whether the plea was being entered into with full knowledge of what Purvis could receive if he chose to go to trial. Purvis answered the questions thoroughly and there is nothing to indicate that he did not understand or that he was being coerced. Thus, the trial court's hearing was sufficient to ascertain that Purvis's plea was made knowingly, voluntarily and that he had the intelligence to understand the proceedings.

Therefore, the hearing held by the trial court, along with the plea colloquy, the competency report and the arraignment proceeding were sufficient under the law of this Commonwealth to determine that the plea was valid. Thus, we will affirm the decision of the trial court.

ALL CONCUR.

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