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TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-001687-MR

KAY SNODGRASS

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE GREGORY BARTLETT, JUDGE
ACTION NO. 16-CR-00334-001

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: KRAMER, CHIEF JUDGE; JOHNSON AND MAZE, JUDGES.

JOHNSON, JUDGE: This is an appeal by Kay Snodgrass (“Snodgrass”), from the October 31, 2016 Final Order of the Kenton Circuit Court. Snodgrass appeals the order alleging that her due process rights were violated when the court allowed the Commonwealth of Kentucky (“Commonwealth”) to introduce evidence at sentencing relating to uncharged misconduct, dismissed charges and unverified

community complaints. After reviewing the record in conjunction with the applicable legal authorities we AFFIRM the Final Order of the court.

BACKGROUND

On April 28, 2016, Snodgrass was indicted on several charges: Trafficking in a Controlled Substance, first degree, two or more grams heroin, 2nd offense, or complicity thereof;¹ Trafficking in a Controlled Substance, first degree, less than two grams heroin, or complicity thereof;² and Possession of a Controlled Substance, first degree.³

On September 16, 2016, Snodgrass accepted a plea agreement reducing the charges on condition of a guilty plea leading to a total of ten years to serve. The plea agreement also allowed Snodgrass to be free to argue for a lesser or alternative sentence. A Pre-Sentencing Investigative report (PSI) was ordered to be prepared by the Division of Probation and Parole.

On October 28, 2016, Snodgrass appeared with her attorney before the court for her final sentencing hearing. At the hearing Snodgrass acknowledged her drug problem, expressed remorse and indicated to the court that she would attempt to change her lifestyle. The Commonwealth stated that Snodgrass' recent behavior was not a single episode in her life, but part of habitual criminal drug activity. The Commonwealth called Sgt. Justin Wietholter ("witness") of the Covington Police

¹ Kentucky Revised Statutes ("KRS") 218A.1412 and KRS 502.020, Class B Felony.

² KRS 218A.1412 and KRS 502.020, Class D felony.

³ KRS 218A.1415, a felony.

Department to testify about problems in the neighborhood from 2013 until 2016, concerning the activities of Snodgrass, her character and background. Witness testified about complaints sent to the police department through e-mails, the police department's investigation and surveillance of Snodgrass, and her uncharged criminal activity of the past all dating back to 2013.

After hearing from all parties, reviewing the PSI report, taking in consideration the nature and circumstances of the crime, and the history, character and condition of Snodgrass, the court on October 31, 2016, entered an order accepting the recommended sentence of the Commonwealth and sentenced Snodgrass to ten years in prison.

On November 7, 2016, Snodgrass appealed the final Judgment and Sentence of Imprisonment entered on October 31, 2016.

STANDARD OF REVIEW

Sentencing decisions are ultimately within the sound discretion of the court, therefore we review them for an abuse of discretion. We will not disturb the court's ruling unless its decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles. *Howard v. Commonwealth*, 496 S.W. 3d 471, 475 (Ky. 2016) (citing *Commonwealth v. English*, 993 S.W. 2d 941, 945 (Ky. 1999)).

ANALYSIS

Snodgrass argues on appeal that the court should not have allowed testimony of uncharged crimes and hearsay via the e-mails. In addition, Snodgrass

alleges that she was not given adequate notice prior to the final sentencing hearing of any of the particular allegations which the witness made against her concerning her behavior prior to the sentencing hearing.

In reviewing the sentencing hearing, the record supports that Snodgrass' attorney was given a copy of the e-mails witness testified from prior to the hearing. Her attorney made no objections and when the Commonwealth noted that Snodgrass' attorney received copies, he agreed. Snodgrass had the opportunity to review and prepare a defense if she so desired prior to the witness testifying. Therefore, we find no error.

The second error Snodgrass alleges concerns whether the court should have allowed a witness to testify concerning Snodgrass' prior dismissed or uncharged crimes, or testify about the e-mails the police department received from the community. Snodgrass did object to the prior complaints being considered by the court arguing that she never pled guilty to any prior complaints, but admits to the current charges of trafficking.

However, we do not agree with Snodgrass that the court erred in allowing hearsay testimony or testimony concerning police surveillance which included comments on alleged criminal activity at her home. Kentucky Rules of Evidence ("KRE") 1101(d) specifically states that the KRE do not apply at sentencing by a judge. Thus, the issue of the court allowing hearsay is unfounded. The court may include evidence which might otherwise be inadmissible at trial.

Kentucky Revised Statutes (“KRS”) 532.050 requires the court to give due consideration to the PSI.

- (1) No court shall impose sentence for conviction of a felony, other than a capital offense, without first ordering a presentence investigation after conviction and giving due consideration to a written report of the investigation. . . .
- (2) The report shall be prepared and presented by a probation officer and shall include:
 - (a) The results of the defendant’s risk and needs assessment;
 - (b) An analysis of the defendant’s history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, and personal habits;
 -
 - (d) Any other matters that the court directs to be included.

KRS 532.050

In this case, Snodgrass acknowledged that she was aware of the PSI, and raised no objections. The court noted that the PSI included information about the surveillance of the police department.

Snodgrass gave her statement to the court, and requested a five-year sentence. The court heard testimony from the only witness called by either party and afforded Snodgrass an opportunity to cross examine the witness. Thus, Snodgrass was afforded her due process rights at the hearing. That the court, after reviewing the PSI and listening to both Snodgrass and the Commonwealth, chose to impose the sentence proposed by the Commonwealth is not alone reason to find an abuse of discretion. When

Snodgrass entered her guilty plea, she knew there was a possibility that the court could impose the ten-year sentence. The court based its decision at the hearing on numerous factors including Snodgrass' risk and needs assessment, her family situation, background and person habits. Thus, we find that Snodgrass was afforded a meaningful judicial sentencing as required under *Caraway v. Commonwealth*, 459 S.W.3d 849, 854 (Ky. 2015). The court exercised proper authority in sentencing Snodgrass to ten years in prison as recommended by the Commonwealth rather than the five years as requested by Snodgrass.

CONCLUSION

Based upon the foregoing, we AFFIRM the Final Sentencing Order of the Kenton Circuit Court.

ALL CONCUR.

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