

RENDERED: NOVEMBER 30, 2018; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-000629-MR

JEREMY S. WELCH

APPELLANT

v. APPEAL FROM MEADE CIRCUIT COURT
HONORABLE ROBERT A. MILLER, JUDGE
ACTION NO. 16-CR-00134

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, DIXON, AND TAYLOR, JUDGES.

DIXON, JUDGE: Jeremy S. Welch appeals a Meade Circuit Court judgment entered upon a guilty plea convicting him of flagrant nonsupport. Welch contends the court erred by denying his pre-judgment motion to withdraw his guilty plea and dismiss the indictment for lack of jurisdiction. After careful review, we affirm.

In June 2010, a Nevada court entered judgment against Welch for child support arrearages of \$41,366.96. Welch eventually moved to Meade County, Kentucky, and Nevada child support officials sought to register and enforce the judgment in Kentucky. In May 2016, the Meade District Court rendered an order enforcing the Nevada judgment, establishing an arrearage amount, and ordering Welch to make arrearage payments each month.

In September 2016, Welch was indicted by a Meade County grand jury on one count of flagrant nonsupport pursuant to KRS 530.050(2)(a). Welch thereafter negotiated a plea agreement with the Commonwealth and pled guilty to the charge on January 5, 2017. Approximately one month later, Welch filed a motion to withdraw his guilty plea and dismiss the indictment. Welch alleged the indictment failed to invoke the court's jurisdiction because it was based on a Nevada support order for a child who was a Nevada resident. The circuit court denied Welch's motion and sentenced him according to the terms of the plea agreement. This appeal followed.

Pursuant to RCr 8.10, a court may permit a guilty plea to be withdrawn at any time pre-judgment. If the plea was entered voluntarily, "the decision to allow the withdrawal is within the trial court's discretion." *Elkins v. Commonwealth*, 154 S.W.3d 298, 300 (Ky. App. 2004).

On appeal, Welch challenges the criminal jurisdiction of the Meade Circuit Court, contending it lacked jurisdiction because the child was not a Kentucky resident. He further opines the Nevada order was registered in Kentucky merely for civil enforcement, and Kentucky lacked jurisdiction to prosecute him for flagrant nonsupport.

At the outset, we note Welch was indicted pursuant to KRS 530.050(2)(a), which provides:

(2) A person is guilty of flagrant nonsupport when he persistently fails to provide support which he can reasonably provide and which he knows he has a duty to provide by virtue of a court or administrative order to a minor . . . and the failure results in:

(a) An arrearage of not less than one thousand dollars (\$1,000)[.]

Further, as to Kentucky's criminal jurisdiction, KRS 500.060 addresses the territorial applicability of the Kentucky Penal Code and states, in relevant part:

(1) Except as otherwise provided in this section, a person may be convicted under the law of this state of an offense committed by his own conduct . . . when:

(a) Either the conduct or the result which is an element of the offense occurs within this state[.]

Welch first contends the trial court lacked jurisdiction to convict him of flagrant nonsupport because the child did not reside in Kentucky. He relies on

Cleveland v. Commonwealth, 173 S.W.3d 626 (Ky. App. 2005), to support his argument; however, we conclude his reliance on *Cleveland* is misplaced.

In *Cleveland*, the obligor father lived in Tennessee, and a court order from that state required him to pay child support for his minor children who resided in Kentucky. *Id.* The father was eventually convicted of flagrant nonsupport in Kentucky, and he appealed, alleging Kentucky lacked jurisdiction over him because he was a resident of Tennessee and had not committed an offense in Kentucky. *Id.* at 627. This Court rejected those arguments and concluded KRS 500.060(1)(a) provided jurisdiction because the result of father's failure to provide support occurred in Graves County, Kentucky, where the children lived. *Id.* at 628.

In the case at bar, we are simply not persuaded the Meade Circuit Court lacked jurisdiction over Welch because the child resided in Nevada. It was undisputed Welch lived in Kentucky and failed to provide court-ordered support to a minor child. Welch's conduct – failing to pay child support – was an element of the offense of flagrant nonsupport and occurred in Meade County, Kentucky. Pursuant to KRS 500.060(1)(a), the Meade Circuit Court properly exercised jurisdiction over Welch for the offense of flagrant nonsupport. We find no abuse of discretion in the court's decision to deny Welch's motion to withdraw his guilty plea and dismiss the indictment.

Welch next argues the Nevada order was registered in Kentucky merely for the purpose of civil enforcement pursuant to the Uniform Interstate Family Support Act (UIFSA), KRS 407.5101, *et seq.* He contends the UIFSA did not confer jurisdiction to Kentucky to prosecute him for flagrant nonsupport arising from the Nevada judgment. We disagree.

KRS 407.5603(2) plainly provides: “A registered support order issued in another state or foreign country is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.” It is undisputed that the Nevada judgment was registered in Kentucky for enforcement. Despite Welch’s argument to the contrary, KRS 407.5603(2) clearly authorized the Meade Circuit Court to enforce the judgment using the same methods as if the judgment had originated in Kentucky, which includes an indictment for flagrant nonsupport pursuant KRS 530.050(2)(a). After careful review, we find no error in the trial court’s ruling.

For the reasons stated herein, the judgment of the Meade Circuit Court is affirmed.

ALL CONCUR.

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