

RENDERED: NOVEMBER 2, 2018; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-001262-MR

MICHAEL D. CORNISH

APPELLANT

v. APPEAL FROM NELSON CIRCUIT COURT
HONORABLE CHARLES C. SIMMS, III, JUDGE
ACTION NO. 16-CR-00039

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, NICKELL, AND SMALLWOOD, JUDGES.

NICKELL, JUDGE: Michael Cornish appeals an order entered by the Nelson Circuit Court denying his motion to withdraw his guilty plea. Following a review of the record and the applicable law, we affirm.

Cornish was arrested and charged with three counts each of rape in the

second degree¹ and unlawful transaction with a minor in the first degree, victim under sixteen years of age.² The charges were based on allegations reported to Bardstown City Police Detective Jason Woodson, stating Cornish had sexual intercourse with a twelve-year-old and a thirteen-year-old while he was eighteen years of age. The allegations involved two separate occasions.

The Nelson District Court held a preliminary hearing on Cornish's charges, at which Det. Woodson testified he had interviewed the two victims who alleged sometime between July 2015 and Thanksgiving of the same year Cornish entered the twelve-year-old's bedroom through a window and engaged in oral and vaginal sex with them both. Further, the detective testified he was informed Cornish returned on New Year's Eve of the same year to have oral and vaginal sex with the twelve-year-old again. Det. Woodson then testified as to the recorded interview he conducted with Cornish. Cornish told him he had sexual intercourse with one of the girls and this only occurred on one occasion, at which time he believed he was seventeen years old.

Cornish was indicted on the above charges. At his arraignment, he was appointed counsel, Jennifer Lo, from the Department of Public Advocacy (DPA) based on his indigent status. On May 26, 2016, Cornish entered a guilty

¹ Kentucky Revised Statutes (KRS) 510.050, a Class C felony.

² KRS 530.064, a Class B felony.

plea to one count of unlawful transaction with a minor in the first degree, victim under sixteen years of age. Under the plea agreement, the Commonwealth recommended a sentence of ten years' imprisonment, no contact with the victims or their families, registration as a sex offender for twenty years, and parole eligibility after serving 85% of his sentence.

Prior to final sentencing, Cornish retained private counsel because he was dissatisfied with his appointed counsel. Cornish subsequently moved to withdraw his guilty plea, and a hearing was scheduled for February 16, 2017. On that date, Jodie Cornish, Becky Sumner, and Cornish testified. The hearing continued on March 13, 2017, at which time Cornish's prior counsel, Lo, testified. The court entered an order denying Cornish's motion. Final sentencing occurred in accordance with the Commonwealth's plea offer. This appeal followed.

RCr³ 8.10 authorizes a trial court to allow a defendant to withdraw his guilty plea prior to imposition of final judgment. Whether to allow the defendant to do so is within the court's sound discretion; "however, where it is alleged that the plea was entered involuntarily the defendant is entitled to a hearing on the motion." *Williams v. Commonwealth*, 229 S.W.3d 49, 51 (Ky. 2007) (citing *Edmonds v. Commonwealth*, 189 S.W.3d 558, 566 (Ky. 2006)). A trial court abuses its discretion when its decision is "arbitrary, unreasonable, unfair, or

³ Kentucky Rules of Criminal Procedure.

unsupported by sound legal principles.” *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999) (citations omitted). We review the trial court’s factual determination of voluntariness for clear error, that is, whether the decision is supported by substantial evidence. *Rodriguez v. Commonwealth*, 87 S.W.3d 8, 10-11 (Ky. 2002).

Cornish argues his plea was rendered involuntary due to the ineffective assistance of his appointed counsel. Specifically, he contends he was not fully aware of the evidence against him, did not have access to reviewing such evidence, was not informed of his possible defenses, and there was no investigation into the allegations. He also asserts he did not have the mental capacity to fully comprehend his legal situation and his counsel failed to request an evaluation.

The trial court ultimately found Cornish voluntarily entered his plea. The court found Cornish’s testimony was not credible due to his inconsistent statements. At the plea colloquy, Cornish was informed of his rights and agreed to waive them. He also informed the court under oath he was not under the influence of any substance. Both of these aspects of the colloquy were contradicted at the hearing, but the court found no merit in Cornish’s inconsistent self-serving statements. “[A] defendant who expressly represents in open court that his guilty plea is voluntary may not ordinarily repudiate his statements to the sentencing

judge.” *Edmonds*, 189 S.W.3d at 568 (quoting *U.S. v. Todaro*, 982 F.2d 1025, 1030 (6th Cir. 1993)).

At the hearing, Lo testified she reviewed the discovery with Cornish, correctly informed him of the plea offer and what his options were, believed he was competent to stand trial, and any testing potentially would have revealed malingering on his part. She testified she was competent in her assistance of counsel to Cornish and he independently made the decision to take the plea offer. The trial court noted Cornish himself testified Lo did not pressure or coerce him into accepting the offer. The trial court relied on Lo’s testimony, which it considered to be more credible, in determining Cornish’s plea was voluntary.

“[T]he reviewing court must defer to the determination of facts and credibility made by the trial court.” *Brown v. Commonwealth*, 253 S.W.3d 490, 500 (Ky. 2008). Based on the totality of the circumstances and the trial court’s findings, we discern no error because the trial court’s determination of voluntariness is supported by substantial evidence. Thus, denial of Cornish’s motion to withdraw his guilty plea was not an abuse of discretion and will not be disturbed on appeal.

For the foregoing reasons, the Nelson Circuit Court order is affirmed.

ALL CONCUR.

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