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NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2017-CA-001797-MR

JALA STRATTON

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT  
HONORABLE JULIE REINHARDT WARD, JUDGE  
ACTION NO. 17-CR-00315

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE, GOODWINE, AND KRAMER, JUDGES.

ACREE, JUDGE: Jala Stratton appeals a judgment and sentence on a plea of guilty of the Campbell Circuit Court. She argues the trial court erred when it denied her request for probation and required payment of the service fee mandated for those convicted of driving under the influence (DUI). We affirm.

## **BACKGROUND**

On May 19, 2015, while under the influence of drugs and alcohol, Stratton drove a vehicle on Interstate 471 in Campbell County and wrecked her vehicle when she drove into an embankment. She was indicted on the following charges: first-degree wanton endangerment, driving under the influence, possession of a controlled substance, and first-degree criminal mischief. The Commonwealth offered Stratton a recommended sentence of ten years probated for five years with DUI penalties and conditions. She accepted the offer and entered a guilty plea. The trial court rejected the Commonwealth's recommendation because the court believed Stratton's offenses were serious enough to warrant a term of imprisonment and gave Stratton an opportunity to withdraw her plea. However, Stratton chose to go forward with her guilty plea despite knowing the court intended to impose a prison sentence. Stratton submitted a sentencing memorandum and other documentation in an effort to convince the trial to accept the Commonwealth's recommended sentence, but the trial court rejected the recommendation, as previously indicated, and sentenced Stratton to two and one-half years in prison. This appeal followed.

During the pendency of this appeal, approximately five months after her notice of appeal was filed, the trial court placed Stratton on shock probation. Stratton later violated the terms of her probation, but the trial court allowed her to

remain on probation on the condition that she complete, *inter alia*, the Campbell County Detention Center Community Rehabilitation Program.

### **ANALYSIS**

#### **Alternative sentence**

Stratton argues the trial court abused its discretion when it denied her request for probation and instead sentenced her to two and one-half years of imprisonment. Stratton is currently on shock probation, and her appeal of this issue is now moot. This case bears some factual similarity to *Jones v. Commonwealth*, 260 S.W.3d 355 (Ky. App. 2008), but it is distinguishable in a substantive and critical way.

In *Jones*, as here, the trial court rejected the Commonwealth's recommended sentence of probation based on the defendant's criminal record. *Id.* at 358. The defendant was placed on shock probation while his appeal was pending, and the Commonwealth moved to dismiss arguing the defendant's appeal was moot "because Jones received the benefit of the bargain under his plea agreement with the Commonwealth, . . . [as he was] released from his commitment to the Calloway County Jail and is now on probation for his offense." *Id.* (internal quotation marks omitted). Up to a point, this Court agreed, stating the defendant "now is receiving the benefit of his bargain, *i.e.*, he is on probation, which is what

the Commonwealth recommended in exchange for his guilty plea.” *Id.* And this is where the facts in the instant case differ from *Jones*.

In *Jones*, “[t]he [circuit] court did not permit Jones to withdraw his guilty plea, which Jones claims he was entitled to do, and he apparently persists in his claim that he wants to withdraw his guilty plea, despite the fact that he is currently on shock probation. Thus, his claim is not moot.” *Id.* at 358-59.

Here, the trial court gave Stratton an opportunity to withdraw her guilty plea, and she chose to maintain her guilt even though the trial court informed her it would likely sentence her to a term of imprisonment. Stratton has not raised any issues that would affect the voluntariness of her plea, such as a request for a competency hearing as the defendant in *Jones* requested. In fact, she still does not ask to withdraw her guilty plea, but merely seeks to be placed on probation as bargained for.

Stratton ultimately received more than the benefit of her bargain. The plea agreement rejected by the trial court was a ten-year sentence probated for five years. Stratton was actually sentenced to two and one-half years of imprisonment and served six months of her prison sentence before being placed on shock probation for a term of five years. Stratton bargained for a term of five years of probation, which she received, with the added benefit of less time to serve should

her probation ever be revoked. We conclude that, under these circumstances, Stratton's contention that her sentence should be amended to probation is moot.

However, even if Stratton's argument is not moot, it lacks merit.

Because sentencing decisions "are ultimately committed to the trial court's sound discretion, we review these rulings for an abuse of discretion. So we will not disturb the trial court's sentencing determination unless convinced that its decision was 'arbitrary, unreasonable, unfair, or unsupported by sound legal principles.'"

*Howard v. Commonwealth*, 496 S.W.3d 471, 475 (Ky. 2016) (quoting *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999)).

In *Howard*, the defendant pleaded guilty "to five counts of first-degree trafficking in a controlled substance, second offense. He was sentenced to ten years' imprisonment with a \$1,000 fine on each count with two counts running consecutively for a maximum twenty-year total sentence." *Id.* at 473. The trial court informed the defendant he could be sentenced to the maximum penalty of twenty years. *Id.* at 474. After considering "the nature of his current charges and his criminal history and [the extent he could be considered] a danger to the community and his family members by involving his sons in the drug trade[.]" the trial court decided to impose the maximum sentence. *Id.* Applying the abuse of discretion standard, our Supreme Court affirmed the trial court's judgment, noting

the defendant “knowingly, intelligently, and willingly entered into an open guilty plea expressly acknowledging this sentence was a possible outcome.” *Id.* at 476.

Here, Stratton entered a guilty plea and, prior to sentencing, the trial court informed her the Commonwealth’s recommendation was not acceptable and gave her the opportunity to withdraw her guilty plea. As in *Howard*, Stratton knew the trial court would likely reject the recommended sentence when she chose to maintain her guilty plea. Because Stratton knowingly, intelligently, and willingly reaffirmed her guilt when given the opportunity to withdraw her plea to the contrary, we affirm the trial court’s judgment and sentence.

*DUI service fee*

Stratton argues the trial court erred in assessing a DUI service fee because she was indigent. Our Supreme Court has held “[t]he [DUI] service fee must be imposed in all cases” regardless of ability to pay. *Commonwealth v. Moore*, 545 S.W.3d 848, 853 (Ky. 2018) (discussing the inapplicability of waiver pursuant to Kentucky Revised Statutes (KRS) 534.040(4) to the DUI service fee in KRS 189A.050). Stratton was entitled to move the trial court for a show cause hearing to analyze her ability to pay under KRS 534.020(3)(a)(1). *Id.* at 854. Upon a finding that Stratton “is unable to pay, ‘the court may enter an order allowing additional time for payment, reducing the amount of each installment, or modifying the manner of payment in any other way.’” *Id.* (quoting KRS

534.020(3)(a)(1)). Considering these circumstances, we conclude the trial court correctly imposed the DUI service fee on Stratton.

**CONCLUSION**

For these reasons, we affirm the judgment and sentence on a plea of guilty of the Campbell Circuit Court.

ALL CONCUR.

**BRIEF FOR APPELLANT:**

Kathleen K. Schmidt  
Assistant Public Advocate  
Frankfort, Kentucky

**BRIEF FOR APPELLEE:**

Andy Beshear  
Attorney General of Kentucky  
  
M. Brandon Roberts  
Assistant Attorney General  
Frankfort, Kentucky