

IMPORTANT NOTICE
NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED “NOT TO BE PUBLISHED.” PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.

RENDERED: MARCH 22, 2007
NOT TO BE PUBLISHED

Supreme Court of Kentucky

FINAL

2005-SC-000423-MR

DATE 4-12-07 EIA Ground, DC

VONDA BRIDGEWATER

APPELLANT

V.

APPEAL FROM ADAIR CIRCUIT COURT
HONORABLE JAMES G. WEDDLE, JUDGE
NO. 04-CR-00162

COMMONWEALTH OF KENTUCKY

APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Appellant Vonda Bridgewater was convicted following a jury trial of trafficking in a controlled substance in the first degree, second offense. She was sentenced to twenty years imprisonment. Appellant complains on appeal that the trial judge erred in not accepting the guilty plea she attempted to enter on the day of trial, after the jury had been selected and sworn. She argues that although a judge has discretion whether or not to accept a plea, it was error for the court to arbitrarily select a time after which it would not accept her guilty plea deal. The Commonwealth responds that the trial court correctly exercised its discretion considering all of the circumstances -- which included the fact that she was being tried with a co-defendant, her brother Anthony Bridgewater, and that the deal included her agreement to testify against him.

Appellant rejected a plea agreement several weeks before trial which was similar

to the offer she later attempted to accept on the day of trial. At that time, appellant's attorney reported to the court that the Commonwealth had offered to amend the charge to trafficking in a controlled substance without any enhancement, and recommend a sentence of eight years. Appellant stated in open court that she wanted to go to trial.

The court subsequently consolidated appellant's and Anthony Bridgewater's charges for trial on motion of the Commonwealth on the basis that the case involved the same factual basis and witnesses. Anthony Bridgewater was charged with trafficking in a controlled substance in the same incident involving a controlled buy by a confidential informant. Trial was begun on May 2, 2005. After the jury was selected, appellant's counsel informed the court that there was a deal. The jury was sent out of the courtroom and the court asked counsel to explain what they meant in talking about a deal. The Commonwealth's Attorney and defense counsel explained that the Commonwealth had offered to amend the charge from a class B felony to a class C felony, as if appellant had not already been convicted of a first offense trafficking charge, and recommend an eight year sentence. In return, appellant would agree to testify truthfully against her co-defendant brother in his trial.

The court asked Anthony Bridgewater's counsel what she thought. His counsel stated that she would move for a mistrial, and concluded that having to proceed given that plea deal would be "manifestly unjust." She questioned the legality of amending the charge to a first offense if appellant had already been convicted of an offense. Counsel argued that the situation at hand was an ambush, that appellant was changing her statements, and that it was not possible for her to proceed with a defense in a fair manner.

The trial court then ruled that it was not going to accept the plea agreement, and

told defense counsel, "That way there'll not be any ambushes." However, the court added, "That is not why I am doing it." The court noted the parties could have made a plea agreement prior to that time. The judge expressed frustration with such last minute agreements arising after hearings in his courtroom. The court said that the jury was ready and a jury ought to hear the case.

The case proceeded to trial. At trial, Anthony Bridgewater's counsel objected to hearsay statements from appellant that Anthony was a participant in the transaction at issue. The court held that the statements were hearsay and not admissible under any hearsay exception. After the statements were excluded, defense counsel for Anthony Bridgewater moved to dismiss the charge against him as there was no other evidence connecting him with the trafficking incident besides appellant's statements. The judge dismissed the charge against Anthony Bridgewater, and the case proceeded against appellant, leading to her jury conviction.

Appellant believes the court acted arbitrarily in not accepting the plea agreement because the jury had been selected. She argues this was capricious and unreasonable. She contends that the court's basic reason, that the jury was selected and ready to hear the case, was essentially a determination that the plea was not timely. Appellant notes no deadline was set by the court before trial as to when a plea would be accepted, and unexpectedly to adhere to a deadline on the day of trial was unreasonable. Appellant argues that because the guilty plea was rejected inappropriately, this court should vacate her conviction and remand with a requirement that the court must accept her plea and the sentence recommendation, or at least to sentence her for a class C felony.

A trial judge has discretion to refuse to accept a plea agreement. RCr 8.08

states:

A defendant may plead not guilty, guilty or guilty but mentally ill. The court may refuse to accept a plea of guilty or guilty but mentally ill, and shall not accept the plea without first determining that the plea is made voluntarily with understanding of the nature of the charge. If a defendant refuses to plead or if the court refuses to accept a plea of guilty or guilty but mentally ill or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

We do not agree that the court rejected the plea agreement because it had arbitrarily selected a deadline. The court did not inform the parties immediately that a plea was out of the question based on the time at which it was presented. Instead, the court inquired into the plea deal, and its affect on the case and the co-defendant at trial. We believe the record shows that the court rejected the guilty plea after assessing all of the circumstances. Although the court expressed frustration in general with pleas being entered after the court had acted in a case, we do not believe that appellant was singled out as a “precedent” to create a lesson for other defendants in his courtroom.

Our review of the record convinces us that the trial court exercised discretion in refusing to accept the plea agreement, and this was an exercise of sound judicial discretion given the circumstances of the case. Moreover, we conclude that the court sufficiently articulated its reasons for rejecting the plea agreement, see Hoskins v. Maricle, 150 S.W.3d 1, 24 (Ky. 2004), and while the court stated that the danger of an “ambush” was not its reason for rejecting the plea deal, we believe it is apparent that the court took the prejudice to the co-defendant into consideration in its decision. We regard the lateness of the agreement, the effect on the court’s administration, and the prejudice to Anthony Bridgewater to be sound bases for not accepting the plea agreement.

Therefore, we affirm appellant’s conviction in the Adair Circuit Court.

All Concur.

COUNSEL FOR APPELLANT:

Euva D. May
Assistant Public Advocate
Department of Public Advocacy
100 Fair Oaks Lane, Suite 302
Frankfort, Kentucky 40601

COUNSEL FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky
Room 118 Capitol Building
Frankfort, Kentucky 40601

James Havey
Assistant Attorney General
1024 Capital Center Drive
Frankfort, Kentucky 40601