

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NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED “NOT TO BE PUBLISHED.” PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD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 OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.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: NOVEMBER 18, 2010

NOT TO BE PUBLISHED

Supreme Court of Kentucky

2010-SC-000115-MR

FINAL

DATE *A. Townes*
12/09/2010

APPELLANT

AARON JONES, JR.

V.

ON APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE KIMBERLY N. BUNNELL, JUDGE
NO. 08-CR-00397

COMMONWEALTH OF KENTUCKY

APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Appellant, Aaron Jones, Jr., appeals the trial court's denial of his motion to withdraw his guilty plea. For the following reasons, we affirm the decision of the Fayette Circuit Court.

The basic facts of this case are not in dispute. On August 5, 2007, Appellant assaulted his wife, Teresa Woodley, with a knife and dumbbell weights, causing severe, life-threatening head injuries. Appellant was ultimately indicted on one count of assault in the first degree, criminal abuse in the first degree, tampering with physical evidence, and being a persistent felony offender in the first degree.

On September 4, 2007, the Fayette District Court entered a Commitment Order directing the Kentucky Correctional Psychiatric Center ("KCPC") to

evaluate Appellant's competency and criminal responsibility. On October 4, 2007, the court entered an Order for Psychiatric Exam and Treatment directing KCPC to determine whether Appellant was competent to stand trial and whether he met the criteria for "insanity" as defined pursuant to KRS 504.060(5). On December 18, 2007, Appellant was admitted to KCPC for examination and was discharged on February 19, 2008.

Upon Appellant's motion, the Fayette Circuit Court conducted a competency hearing. Both sides introduced expert testimony and both concluded that Appellant suffered from a mental illness. The Commonwealth offered the testimony of Dr. Greg Perri, a licensed clinical psychologist at KCPC. Dr. Perri believed that Appellant suffered from schizoaffective disorder but was competent to stand trial. Appellant offered the testimony of Dr. Douglas Ruth, a board certified forensic psychologist, who believed that Appellant suffered from schizophrenia and was incompetent to stand trial. After the hearing, the trial court concluded that Appellant, while mentally ill, was competent to stand trial.

On March 27, 2009, defense counsel again cast doubts as to Appellant's competency to stand trial. On November 10, 2009, a second competency hearing was held. Both psychologists from the previous hearing were called and both effectively restated their testimony from the prior competency hearing. The trial court subsequently found Appellant competent to stand trial.

Appellant entered a plea of guilty but mentally ill on December 4, 2009. In exchange for this plea, the Commonwealth amended counts one and four of the indictment to assault in the *second degree* and being a persistent felony offender in the *second degree*. Appellant agreed to the Commonwealth's sentence recommendation of ten years, enhanced to twenty years by the PFO charge. Additionally, Appellant was required to pay \$3,572.99 in restitution. On December 8, 2009, the trial court entered its judgment on the guilty but mentally ill plea. Appellant moved to withdraw his guilty plea on January 5, 2010. On January 8, 2010, after conducting a hearing, the trial court denied Appellant's motion. Appellant now appeals the order overruling his motion to withdraw his guilty plea as a matter of right. Ky. Const. § 110(2)(b).

The crux of Appellant's allegation is that he was incompetent to plead guilty. A defendant's competency to plead guilty is determined by his "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding – and whether he has a rational as well as factual understanding of the proceedings against him." *Thompson v. Commonwealth*, 147 S.W.3d 22, 32 (Ky. 2004) (citing *Dusky v. United States*, 362 U.S. 402 (1960)). Determinations of competency are made on a preponderance of the evidence standard. *Id.* at 32.

Prior to Appellant's guilty plea, the trial court conducted two separate competency hearings. After both hearings, the trial court found Appellant competent. In both cases, the trial court's determination was based upon the

evidence of Dr. Perri. Dr. Perri examined Appellant at KCPC and steadily increased his prescriptions for the antipsychotic drug, Risperdal. This increase, according to Dr. Perri, led to an overall improvement of Appellant's condition. Dr. Perri diagnosed Appellant as having a schizoaffective disorder – essentially a bipolar disorder with a thought disorder component added on – which causes a fluctuation of mood and sometimes auditory hallucinations. According to Dr. Perri, schizoaffective disorder is treated with medication and counseling. In his opinion, these treatments brought Appellant's symptoms to a manageable level. Appellant seemingly confirmed this when he reported that his auditory hallucinations had resolved.

Dr. Perri further testified that Appellant could identify, “for the most part,” the roles of the different parties in the courtroom based, in part, on Appellant's prior experience with the legal system. In addition, Appellant knew his charges and that his attorney would represent him, and he also had an understanding of the penalties involved. It was Dr. Perri's opinion that Appellant was competent, understanding the proceedings against him and having the capacity to work with his attorney. It is also important to note that on his two prior visits to KCPC in 1998 and 2000, Appellant was deemed competent. After new allegations were raised to doubt Appellant's competency, Dr. Perri again examined Appellant. Appellant was taking the medications Risperdal and Geodone, and Dr. Perri noted that his condition had improved and that Appellant was still competent to stand trial. At both hearings, defense

counsel offered the testimony of Dr. Ruth, who, in contrast to Dr. Perri, testified that Appellant was incompetent to stand trial. The trial court, however, disagreed and found Appellant competent on both occasions.

The trial court's determination of competency is a finding of fact and reviewed under the clearly erroneous standard. *Thompson*, 147 S.W.3d at 33. In the instant case, the trial court was presented with sufficient evidence, in the form of Dr. Perri's testimony, to conclude that Appellant had a "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding – and whether he [had] a rational as well as factual understanding of the proceedings against him." *Id.* at 32. Thus, the trial court's finding was supported by substantial evidence and, therefore, not clearly erroneous.

After concluding that the trial court did not clearly err by finding that Appellant was competent to enter a guilty plea, the next issue to be resolved is whether the trial court erred in denying Appellant's motion to withdraw the guilty plea. RCr 8.10 provides that "[a]t any time before judgment the court may permit the plea of guilty . . . to be withdrawn and a plea of not guilty substituted." The standard of review of a trial court's denial of a motion to withdraw a guilty plea is as follows:

Once a criminal defendant has pleaded guilty, he may move the trial court to withdraw the guilty plea, pursuant to RCr 8.10. If the plea was involuntary, the motion to withdraw it must be granted. However, if it was voluntary, the trial court may, within its discretion, either grant or deny the motion The trial court's determination on whether the plea was

voluntarily entered is reviewed under the clearly erroneous standard. A decision which is supported by substantial evidence is not clearly erroneous. If, however, the trial court determines that the guilty plea was entered voluntarily, then it may grant or deny the motion to withdraw the plea at its discretion. This decision is reviewed under the abuse of discretion standard. A trial court abuses its discretion when it renders a decision which is arbitrary, unreasonable, unfair, or unsupported by legal principles.

Rigdon v. Commonwealth, 144 S.W.3d 283, 288 (Ky.App. 2004) (internal citations omitted).

In his Motion to Enter a Guilty Plea, signed by Appellant on December 4, 2009, he stated as follows: "I declare that I offer my plea of 'Guilty' freely and voluntarily and of my own accord and with full understanding of all the matters set forth in the Indictment and in this petition and in the certificate of my counsel which is attached." *See Edmonds v. Commonwealth*, 189 S.W.3d 558, 569 (Ky. 2006) ("Solemn declarations in open court carry a strong presumption of verity."). Appellant fails to argue that his guilty plea was, in any way, involuntary. During the plea colloquy, Appellant noted that he was able to read and write and that he had completed twelve years of school. Appellant also requested to sign the guilty plea petition in open court. The trial court explained the rights Appellant would waive by pleading guilty. In addition, Appellant, when asked what made him guilty, indicated that he "struck a person with an instrument" and later acknowledged that that person was Woodley. The trial court found Appellant's plea to be knowingly,

intelligently, and voluntarily entered. With no allegations to the contrary, his plea appears voluntary and, thus, it was up to the discretion of the trial court whether to withdraw Appellant's guilty plea.

The trial court listened to Appellant's arguments regarding his motion to withdraw his guilty plea. When asked if the motion was based upon new evidence, defense counsel indicated it was not. Faced with no new evidence, and finding that Appellant was competent on two prior occasions and that the plea was not improper, the trial court denied Appellant's motion.

After reviewing the record, we do not believe the trial court abused its discretion in reaching this conclusion. Appellant was charged with four felonies and admitted to assaulting his wife. In exchange for his guilty plea, the Commonwealth dismissed two of his felony charges and amended the remaining two to lesser charges. Under these circumstances, the offer from the Commonwealth represented "a meaningful choice between the probable outcome at trial and the more certain outcome offered by the plea agreement." *Commonwealth v. Elza*, 284 S.W.3d 118, 122 (Ky. 2009) (quoting *Vaughn v. Commonwealth*, 258 S.W.3d 435, 439 (Ky. App. 2008)).

For the reasons stated herein, we hereby affirm the judgment of the Fayette Circuit Court.

All sitting. All concur.

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