

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2004-CA-000635-MR

PAUL WILKES

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT  
HONORABLE R. JEFFREY HINES, JUDGE  
ACTION NOS. 02-CR-00177 & 02-CR-00177-2

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, CHIEF JUDGE; McANULTY, JUDGE; MILLER, SENIOR JUDGE.<sup>1</sup>

COMBS, CHIEF JUDGE: Paul Wilkes appeals from an order of the McCracken Circuit Court denying his motion to withdraw his guilty plea without holding an evidentiary hearing. As we have found no error, we affirm.

On June 14, 2002, the McCracken County Grand Jury returned an indictment charging Wilkes and two other men with capital murder and complicity to commit first-degree burglary.

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<sup>1</sup> Senior Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

In the company of Eugene Thomas, these three defendants allegedly approached the residence of Edward White in Paducah on the afternoon of April 3, 2002. Each of the four young men carried a firearm. When Thomas entered the rear of the residence, he was shot in the hand and chest by White. The defendants allegedly fired numerous shots into the house and fled. Thomas died of his injuries.

On December 30, 2003, pursuant to a negotiated plea agreement with the Commonwealth, Wilkes appeared before the McCracken Circuit Court with counsel and entered a plea of guilty to wanton endangerment in the first degree. He entered an *Alford* plea (Alford v. North Carolina, 39 U.S. 956, 89 S.Ct. 1306, 22 L.Ed.2d 558 (1969)) to the charge of second-degree burglary. Before accepting the plea, the court entered into a lengthy colloquy with both Wilkes and his attorney. The court took care to determine that Wilkes understood the charges against him as well as the implications of his plea. The Commonwealth recommended a sentence of ten-years' imprisonment for burglary and two years for wanton endangerment. The murder charge was dismissed.

On February 25, 2004, just before Wilkes was to be sentenced, his attorney requested that Wilkes be permitted to withdraw his guilty plea. Counsel explained that Wilkes felt that he had been pressured during the December hearing and that

he now felt that his guilty plea had been a mistake. While no request for an evidentiary hearing was made, the trial court gave Wilkes an opportunity to express himself directly to the court. The Commonwealth strenuously opposed the motion, citing the court's comprehensive colloquy with Wilkes and his counsel before the pleas were accepted. The court found that Wilkes's pleas had been freely and intelligently entered and accordingly denied the motion to withdraw them. Wilkes was sentenced to serve twelve years in prison in accordance with the Commonwealth's recommendations. This appeal followed.

RCr<sup>2</sup> 8.10 provides that "[a]t any time before judgment the court may permit the plea of guilty or guilty but mentally ill, to be withdrawn and a plea of not guilty substituted." In Rodriguez v. Commonwealth, 87 S.W.3d 8 (Ky. 2002), the Supreme Court of Kentucky reviewed the rule and held that the discretion of the trial court is not absolute in denying a request for withdrawal of a guilty plea:

Our case law is clear that the discretion to deny a motion to withdraw a guilty plea exists only after a determination has been made that the plea was voluntary. If the plea was involuntary, the motion to withdraw it must be granted.

Id. at 10. (Emphasis original). The voluntariness of the plea must be determined by considering all of the relevant

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<sup>2</sup> Kentucky Rules of Criminal Procedure.

circumstances. Id. An unsubstantiated claim that a guilty plea was involuntary does not mandate an evidentiary hearing. Moreover, the trial court is not required to conduct a hearing *sua sponte*. See Beecham v. Commonwealth, 657 S.W.2d 234 (Ky. 1983).

After our review of the record, we conclude that the trial court correctly found that Wilkes's guilty plea was knowing and voluntary. At the time the plea was entered, Wilkes acknowledged that he understood the charges against him and that he understood that he was waiving his constitutional rights. Wilkes agreed that he was entering the guilty plea of his free will. He also expressed that he was pleased with his counsel's representation and with the terms of the plea agreement. We find no abuse of discretion and hold that the court acted correctly in denying the motion to withdraw the guilty plea.

The order of the McCracken Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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