

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

NO. 2006-CA-000316-MR

DOUGLAS SCOTT HASSENGER

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT  
HONORABLE JOHN L. ATKINS, JUDGE  
ACTION NO. 05-CR-00080

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: KELLER AND NICKELL, JUDGES; KNOPF,<sup>1</sup> SENIOR JUDGE.

KNOPF, SENIOR JUDGE: The sole issue in this appeal is whether the trial court abused its discretion by denying a motion to withdraw a guilty plea. We affirm.

Appellant, Douglas Scott Hassenger, pled guilty to one count of first-degree robbery pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), and pled guilty to an amended count of second-degree complicity to robbery, one count of tampering with physical evidence, and one count of possession of drug paraphernalia. The

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

Commonwealth recommended a sentence of ten years on the first-degree robbery charge to run consecutively with concurrent five-year sentences on the remaining charges for a total of fifteen years' imprisonment. The plea agreement contained a provision requiring Hassenger to serve eighty-five percent of his ten-year sentence for first-degree robbery before he would be eligible for parole. The trial court held a hearing and ultimately accepted Hassenger's plea. At the subsequent sentencing hearing, Hassenger moved to withdraw his guilty plea on the grounds that his Hepatitis C medical condition had worsened and that his mistaken impression that a co-defendant would also receive a fifteen-year sentence affected the voluntariness of his plea. The trial court denied the motion and this appeal follows.

RCr 8.10 governs the withdrawal of guilty pleas and states:

At any time before judgment the court may permit the plea of guilty or guilty but mentally ill, to be withdrawn and a plea of not guilty substituted.

If the court rejects the plea agreement, the court shall, on the record, inform the parties of this fact, advise the defendant personally in open court or, on a showing of good cause, in camera, that the court is not bound by the plea agreement, afford the defendant the opportunity to then withdraw the plea, and advise the defendant that if the defendant persists in that guilty plea the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

The court can defer accepting or rejecting the plea agreement until there has been an opportunity to consider the presentence report.

The decision to permit the withdrawal of a guilty plea is firmly committed to the sound discretion of the trial court. *Anderson v. Commonwealth*, 507 S.W.2d 187, 188 (Ky. 1974).

Hassenger argues that he should be permitted to withdraw his guilty plea to first-degree robbery on the basis of his Hepatitis C medical condition because the requirement that he serve eighty-five percent of his sentence before being eligible for parole might exceed his life expectancy. However, the record clearly reflects that this requirement was included in the Commonwealth's written offer, which was signed by Hassenger. During the plea colloquy, Hassenger was again made aware of this requirement and assented to the conditions of the plea agreement. Moreover, Hassenger was aware of his serious medical condition as early as 2001, which predated his commission of the offenses and the plea negotiations by several years. We cannot conclude that the trial court abused its discretion.

Hassenger next argues that the trial court should have permitted him to withdraw his guilty plea because of his mistaken impression that his co-defendant would also receive a sentence of fifteen years' imprisonment. The Commonwealth stated that the differential treatment was attributable to the fact that Hassenger was armed with a knife at the time of the offense while the co-defendant was not. At the sentencing hearing, Hassenger denied that he was armed.

There is no indication that the voluntariness of Hassenger's plea somehow depended on the sentence his co-defendant ultimately received. The written plea

agreement made no reference whatsoever to the co-defendant's case. During the plea colloquy, Hassenger stated that his plea was knowing and voluntary. The Eighth Amendment to the United States Constitution “requires only that the trial court focus on the defendant's own culpability for the crime charged, not the culpability of a co-defendant.” *Marshall v. Commonwealth*, 60 S.W.3d 513, 523 (Ky. 2001). Considering the totality of the circumstances surrounding Hassenger's plea, the trial court did not abuse its discretion.

Accordingly, the judgment of the Christian Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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