

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000871-MR

PAUL D. WYATT

APPELLANT

v. APPEAL FROM CASEY CIRCUIT COURT
HONORABLE JAMES D. WEDDLE, JUDGE
ACTION NO. 01-CR-00086

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: ACREE, KELLER, AND MOORE, JUDGES.

KELLER, JUDGE: Paul D. Wyatt has appealed from the order of the Casey Circuit Court denying his motion to withdraw his guilty plea and reinstating the judgment sentencing him to fifteen-years' imprisonment for a sodomy conviction. Having determined that the circuit court properly found that Wyatt's plea was entered voluntarily, knowingly, and intelligently, and that the circuit court did not abuse its discretion in denying the motion, we affirm.

On August 27, 2001, the Casey County grand jury indicted Wyatt on four counts of sex crimes. These charges were

First-Degree Rape (KRS 510.040); First-Degree Sexual Abuse (KRS 510.110); and two counts of First-Degree Sodomy (KRS 510.070), which all arose as a result of his actions against his eight-year-old step-granddaughter. Kentucky State Police Detective Timothy Jaynes investigated the allegations and obtained a recorded confession from Wyatt. Wyatt moved the circuit court to suppress the results of his interview and recorded statement. This motion was denied following an evidentiary hearing. At that point, Wyatt opted to accept the Commonwealth's offer on a plea of guilty, conditioned on his right to appeal the suppression ruling. In exchange for a guilty plea to one count of sodomy, which would be treated as a Class B felony, the remaining charges would be dismissed and the Commonwealth would recommend a fifteen-year sentence. The circuit court held a lengthy hearing prior to accepting the guilty plea, during which Wyatt was extensively questioned to ensure his understanding of the plea procedure and the consequences of his decision to plead guilty. The circuit court accepted Wyatt's plea and scheduled a sentencing hearing for the following month.

Following the guilty plea hearing, but before the sentencing hearing took place, Wyatt filed a motion to withdraw his guilty plea. His attorney, Robert L. Gullette, Jr., attached an affidavit in support of the motion, stating that he had incorrectly informed Wyatt that he would be eligible for parole after serving 20% of his sentence, rather than 85%, and that Wyatt would not have entered a plea had he been properly informed. The parties presented argument on this motion at the

sentencing hearing. At that time, attorney Gullette continued to argue that the basis of the motion was his incorrect advice regarding when Wyatt would be eligible for parole. However, Wyatt himself stated that he wanted to withdraw his plea because he was not guilty of the crime and that he signed the guilty plea form only because his attorney told him he had to in order to take the plea. After considering the guilty plea proceedings and the benefit Wyatt was receiving, as well as the fact that parole was not within its province, the circuit court denied Wyatt's motion to withdraw his plea and sentenced him to fifteen years in prison in accordance with the Commonwealth's recommendation.

Wyatt appealed from the circuit court's judgment, raising two issues: 1) the ruling on his motion to suppress, and 2) the denial of his motion to withdraw his guilty plea.¹ In an opinion rendered March 26, 2004, which became final March 15, 2005, the Court of Appeals affirmed the circuit court's ruling on the motion to suppress, but vacated the ruling on the motion to withdraw the guilty plea. The matter was then remanded to allow the circuit court to hold an evidentiary hearing to determine whether Wyatt's guilty plea was knowingly, intelligently, and voluntarily entered.

Upon remand, the circuit court held the ordered evidentiary hearing, at which Wyatt was represented by new counsel. Wyatt testified that he remembered signing the plea agreement, but that he did not know he was admitting that he was

¹ *Wyatt v. Commonwealth*, 2002-CA-001639-MR.

guilty. He stated that following the guilty plea hearing, once he had figured out what he had done, he contacted his attorney to tell him he wanted to withdraw his plea. He stated that he did not understand what the plea was based on or what it was about. On cross-examination, Wyatt repeatedly testified that the only reason he wanted to withdraw his plea was because he was not guilty, although he admitted that he understood the rights he was giving up. The circuit court then replayed the videotaped recordings of both the guilty plea and sentencing hearings. Wyatt then called his trial attorney to testify. Attorney Gullette testified that he did not recall that Wyatt called him the day after the guilty plea hearing, but did recall being called following Wyatt's interview by pre-trial officers. It was then that he found out about parole eligibility. Attorney Gullette admitted that he had gone over all of the documents with Wyatt and that he would have ended the guilty plea hearing had he thought his client did not understand the proceedings. He also stated that based upon the taped confession, he told Wyatt that he did not have any chance at a not guilty verdict if the case went before a jury.

At the conclusion of the hearing, the circuit court spoke extensively on the record, detailing the issue on which the case was remanded to it, the earlier proceedings, and the current testimony. The circuit court concluded that, based upon the totality of the circumstances, Wyatt's original plea was entered voluntarily and with full knowledge of the consequences. The circuit court also noted that parole eligibility is up to

the Executive Branch, not to the courts. Accordingly, the motion to withdraw the guilty plea was again denied, and the original judgment was reinstated. This appeal followed.²

Our standard of review in the matter is two-fold. First, we must determine whether the circuit court's determination that Wyatt's plea was voluntary is supported by the record under a clearly erroneous standard. In *Lynch v. Commonwealth*, 610 S.W.2d 902, 905 (Ky.App. 1980), this Court held that it "is not to act *de novo* in determining the question of voluntariness. Rather it is to review the record before it to ascertain whether the court below acted erroneously in denying that appellant's pleas were made involuntarily." More recently, the Supreme Court of Kentucky in *Rodriguez v. Commonwealth*, 87 S.W.3d 8, 10 (Ky. 2002), stated, "[o]ur 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 must be granted." Second, if the plea was voluntary, we must determine whether the circuit court abused its discretion in denying Wyatt's motion to withdraw his guilty plea. *Edmonds v. Commonwealth*, 189 S.W.3d 558 (Ky. 2006); *Anderson v. Commonwealth*, 507 S.W.2d 187, 188 (Ky. 1974); *Hurt v. Commonwealth*, 333 S.W.2d 951, 953 (Ky. 1960).

Pursuant to RCr 8.08, a criminal defendant is permitted to plead not guilty, guilty, or guilty but mentally ill. However, a trial court is not permitted to accept a plea

² This matter is before us on a belated appeal, as Wyatt's appointed counsel at the evidentiary hearing failed to timely file a notice of appeal.

of guilty "without first determining that the plea is made voluntarily with understanding of the nature of the charge." In *Edmonds*, the Supreme Court examined the constitutional protections afforded to a defendant in guilty plea proceedings:

A trial court may accept a criminal defendant's conditional guilty plea to any criminal charge, but must first ascertain that the plea is made voluntarily and with an understanding of the nature of the charge. RCr 8.08-.09. Due process requires a trial court to make an affirmative showing, on the record, that a guilty plea is voluntary and intelligent before it may be accepted. *Boykin v. Alabama*, 395 U.S. 238, 241-42, 89 S.Ct. 1709, 1711, 23 L.Ed.2d 274 (1969).

189 S.W.3d at 565 (footnote omitted). However, we note that "a knowing, voluntary and intelligent waiver does not necessarily include a requirement that the defendant be informed of every possible consequence and aspect of the guilty plea." *Turner v. Commonwealth*, 647 S.W.2d 500, 500-01 (Ky.App. 1982). The *Turner* Court noted that "*Boykin* does not mandate that a defendant must be informed of a 'right' to parole. This is especially true since, unlike the rights specified in *Boykin*, parole is not a constitutional right." *Id.* at 500.

The Criminal Rules of Procedure also provide for the withdrawal of a guilty plea: "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." RCr 8.10. The *Edmonds* Court went on to explain such procedures as follows:

Though an RCr 8.10 motion is generally within the sound discretion of the trial

court, a defendant is entitled to a hearing on such a motion whenever it is alleged that the plea was entered voluntarily. If a guilty plea is found to have been entered involuntarily, considering the totality of the circumstances, a trial court must grant a defendant's motion to withdraw the plea. This inquiry is inherently fact-sensitive, thus this Court reviews such a determination for clear error, i.e., whether the determination was supported by substantial evidence.

189 S.W.3d at 566 (citations omitted).

The Supreme Court examined the voluntariness of guilty pleas in *Bronk v. Commonwealth*, 58 S.W.3d 482, 486 (Ky. 2001):

In cases where the defendant disputes his or her voluntariness, a proper exercise of this discretion requires trial courts to consider the totality of the circumstances surrounding the guilty plea and juxtapose the presumption of voluntariness inherent in a proper plea colloquy with a *Strickland v. Washington*[, 446 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984),] inquiry into the performance of counsel:

A showing that counsel's assistance was ineffective in enabling a defendant to intelligently weigh his legal alternatives in deciding to plead guilty has two components: (1) that counsel made errors so serious that counsel's performance fell outside the wide range of professionally competent assistance; and (2) that the deficient performance so seriously affected the outcome of the plea process that, but for the errors of counsel, there is a reasonable probability that the defendant would not have pleaded guilty, but would have insisted on going to trial. [*Sparks v. Commonwealth*, 721 S.W.2d 726, 727-27 (Ky.App. 1987).]

We shall now turn to the case before us. After having reviewed the totality of the circumstances surrounding the entry of plea as well as the hearing on the motion to withdraw the plea, we hold that the circuit court did not err in determining that Wyatt's plea was voluntarily entered. Likewise, we hold that the circuit court did not abuse its discretion in denying Wyatt's motion to withdraw his conditional guilty plea. At the original guilty plea hearing, the circuit court made a significant effort to ensure that Wyatt understood the proceedings and the ramifications of his decision to enter a plea. We note that Wyatt graduated from high school and is able to read, write, and understand the English language. At the time of the hearing, Wyatt was not sick, was not suffering from any mental problems, and was not taking any medication that would render him unable to understand the proceedings. Furthermore, Wyatt testified that he had read the Commonwealth's offer and signed the guilty plea form. He also indicated that he had sufficient time to discuss the terms of the plea with his attorney. The videotaped record reveals that these discussions between Wyatt and his attorney continued during the guilty plea hearing. We additionally note that Wyatt received a significant reduction in a possible sentence had he been convicted on all four charges of the indictment.

The record reflects that Wyatt wanted to withdraw his plea solely due to his insistence that he was not guilty of the crimes for which he was charged. His desire to withdraw his plea was not related to his attorney's advice about parole

eligibility, although we note such advice is not a constitutionally protected *Boykin* right. Therefore, we hold that there is substantial evidence of record to support the circuit court's finding that Wyatt's plea was entered knowingly, intelligently, and voluntarily. Furthermore, the circuit court did not abuse its discretion in ultimately denying his motion to withdraw his guilty plea and reinstating the judgment of conviction.

For the foregoing reasons, the judgment of the Casey Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

J. Brandon Pigg
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BRIEF FOR APPELLEE:

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