

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2006-CA-001492-MR

WILLIAM DAWES LEET

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE GARY D. PAYNE, JUDGE  
ACTION NO. 05-CR-00291

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \*\* \* \*\* \*

BEFORE: HOWARD, JUDGE; GUIDUGLI AND KNOPF, SENIOR JUDGES.<sup>1</sup>

GUIDUGLI, SENIOR JUDGE: William Dawes Leet was convicted of first-degree stalking, two counts of intimidating a participant in the legal process, and violation of a Kentucky EPO/DVO. He received a sentence of five years' imprisonment. On appeal, Leek argues that the trial court erred in finding him competent to enter a guilty plea and by refusing to allow him to withdraw his plea because it was not freely and voluntarily entered. We affirm.

---

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

Leet was indicted for first-degree stalking, second-degree stalking, two counts of intimidating a participant in the legal process, third-degree terroristic threatening, third-degree sexual abuse, harassing communications, and thirteen counts of violating a Kentucky EPO/DVO. The issue of Leet's competency to stand trial was apparent early in the case. The trial court held a competency hearing on September 23, 2005, at which Drs. Peter Shilling and Martin Smith testified. Based on the testimony elicited at the hearing and its own observation of Leet, the trial court found him competent to stand trial.

On December 2, 2005, Leet entered a plea of guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), to first-degree stalking, two counts of intimidating a participant in the legal process, and violating a Kentucky EPO/DVO. The trial court conducted a plea colloquy questioning both Leet and his counsel. The issue of competency was raised again at the colloquy and defense counsel stipulated to a psychological evaluation that found Leet to be competent to stand trial. This evaluation was conducted at the Kentucky Correctional Psychiatric Center (KCPC) in the interim between the first competency hearing and the date of the plea. Defense counsel further stated that he believed Leet appreciated the nature and consequences of the proceedings against him and that he was able to participate rationally in his own defense. The trial court again found Leet to be competent and also found that the plea was knowingly, voluntarily, and freely entered.

Eleven days after entering the guilty plea, Leet moved the trial court to withdraw his plea. On May 18, 2006, the trial court held a second competency hearing over the Commonwealth's objection. Leet's second attorney, Keith Eardley, testified that he was never able to have a meaningful discussion with Leet about the case and that he did not believe that he could rationally participate in his own defense. Drs. Timothy Allen and Douglas Ruth also testified at the hearing. The trial court again found that Leet was competent to enter the guilty plea and denied the motion to withdraw it.

Leet then made a *pro se* motion to withdraw his guilty plea. On May 24, 2006, the trial court held a third competency hearing, again over the Commonwealth's objection. Leet testified that he felt that he was intimidated and pressured into making a guilty plea. The trial court found that Leet was competent to enter the guilty plea and that the plea was freely and voluntarily entered. Leet was sentenced to five years' imprisonment on June 26, 2006. This appeal followed. Additional facts will be developed as necessary.

Leet first argues that the trial court erred by finding him competent to enter a guilty plea. The general rule is that “there is no higher mental standard required to enter a guilty plea than there is to stand trial.” *Conley v. Commonwealth*, 569 S.W.2d 682, 684 (Ky.App. 1978). A defendant must have a “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding” and have both a rational and factual understanding of the proceedings against him. *Thompson v. Commonwealth*, 147 S.W.3d 22, 32 (Ky. 2004)(quoting *Dusky v. U.S.*, 362 U.S. 402

(1960)). The determination of competency is made under the preponderance of the evidence standard. *Id.* The trial court's determination of competency will not be disturbed on appeal unless it is clearly erroneous. *Id.* at 33. A determination is clearly erroneous if it is not supported by substantial evidence. *Id.* Further, appellate courts in Kentucky have recognized that “the trial court is in the best position to determine if there was any reluctance, misunderstanding, involuntariness, or incompetence to plead guilty.” *Bronk v. Commonwealth*, 58 S.W.3d 482, 487 (Ky. 2001)(quoting *Centers v. Commonwealth*, 799 S.W.2d 51, 54 (Ky.App. 1990), note 2).

At the first competency hearing, evidence was presented that Leet possesses above-average intelligence and understood the trial process, the roles of its participants, and appreciated the severity of the charges against him. Although Leet presented with manic and obsessive tendencies, there was testimony that medication should help to stabilize him. Neither expert concluded that Leet was incompetent to stand trial. In the intervening period, Leet was under medical supervision and received medication. KCPC issued an updated evaluation finding Leet to be competent. At the plea colloquy, the trial court questioned Leet and counsel at length. Leet was composed and stated that he understood the rights he was waiving and understood the charges against him. Leet stated that his judgment was not impaired by his medication. Counsel stated that Leet had been able to rationally assist in his defense and stipulated to the evaluation finding Leet to be competent. Based upon the totality of the circumstances, we conclude that the

trial court's finding that Leet was competent to enter a guilty plea was not clearly erroneous.

Next, Leet argues that the trial court erred by denying his motion to withdraw his plea because it was not freely and voluntarily made. Leet stated that he felt intimidated and coerced into pleading guilty.

RCr 8.10 states in part:

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.

“The validity of a guilty plea depends 'upon the particular facts and circumstances . . . including the background, experience, and conduct of the accused.’” *Kotas v. Commonwealth*, 565 S.W.2d 445, 447 (Ky. 1978)(quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)). “In other words, the validity of a guilty plea is determined not by reference to some magic incantation recited at the time it is taken but from the totality of the circumstances surrounding it.” *Id.*

The trial court reopened the competency issue and held another hearing at which it again determined that Leet was competent. An additional hearing was held to determine the validity of the guilty plea as well as another reexamination of the competency issue. Leet stated that he felt intimidated and coerced to plead guilty. Defense counsel described the difficult attorney-client relationship with Leet. However, no new circumstances regarding Leet's competence were presented to the trial court. The court had ample opportunity to observe Leet throughout the course of the proceedings.

The court conducted a thorough plea colloquy at which Leet stated that he was not coerced or intimidated into pleading guilty and that it was his own free choice. Based upon the totality of the circumstances, we conclude that the trial court did not abuse its discretion in denying Leet's motion to withdraw his guilty plea.

For the foregoing reasons the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Gene Lewter  
Lexington, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo  
Attorney General of Kentucky

Todd D. Ferguson  
Assistant Attorney General  
Frankfort, Kentucky