

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2008-CA-001378-MR

TIMOTHY ROUSE

APPELLANT

v. APPEAL FROM GRAVES CIRCUIT COURT  
HONORABLE TIMOTHY C. STARK, JUDGE  
ACTION NO. 07-CR-00187

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, CHIEF JUDGE; THOMPSON, JUDGE; BUCKINGHAM,<sup>1</sup>  
SENIOR JUDGE.

THOMPSON, JUDGE: Timothy Rouse appeals from an order of the Graves

Circuit Court denying his motion for post-conviction relief.

Concluding that the trial court properly found Rouse's guilty plea constitutionally  
valid, we affirm.

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<sup>1</sup> Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

On August 24, 2007, Rouse was indicted by a Graves County grand jury for forgery in the second degree. On April 7, 2008, Rouse entered a written guilty plea which included, *inter alia*, the following:

In return for my guilty plea, the Commonwealth has agreed to recommend to the Court the sentence(s) set forth in the attached "Commonwealth's Offer on a Plea of Guilty." Other than that recommendation, no one, including my attorney, has promised me any other benefit in return for my guilty plea nor has anyone forced or threatened me to plead "**GUILTY.**"

I declare my plea of "**GUILTY**" is freely, knowingly, intelligently and voluntarily made; that I have been represented by counsel; that my attorney has fully explained my constitutional rights to me, as well as the charges against me and any defenses to them; and that I understand the nature of this proceeding and all matters contained in this document.

On April 17, 2008, Rouse filed a motion to withdraw his guilty plea. He contended that he was being sexually abused by prison officials and that he had pled guilty only to obtain his relocation to a different prison where he would be away from his abusers. He further contended that he did not fully understand his plea agreement due to his counsel's failure to provide effective assistance and that he desired hybrid representation for the remainder of the case.

At his final sentencing hearing, Rouse informed the trial court that he desired to withdraw his motion, that he agreed with his guilty plea and desired to be finally sentenced. The trial court then permitted Rouse and his counsel to

confer while it continued its docket. After conferring, Rouse again stated that he wanted to withdraw his motion for self-representation and proceed with his guilty plea.

The trial court then conducted a *Boykin*<sup>2</sup> hearing where Rouse was apprised of and waived his constitutional rights. At the conclusion of the hearing, Rouse stated that he was satisfied with his representation and that no threats or promises had been made to induce him to plead guilty. Following these declarations, the trial court accepted the plea and sentenced Rouse to two-year's imprisonment in accordance with the plea.

On June 17, 2008, Rouse filed a motion to amend his sentence and included a personal letter to the trial court stating that he made a mistake when he committed the offense because he was "young, dumb, and didn't have nothing." Further, Rouse filed a motion pursuant to RCr<sup>3</sup> 11.42, requesting the withdrawal of his guilty plea. In support, Rouse argued that his plea was involuntarily entered because it was induced by his fear of being sexually abused by prison guards. Thus, he contended that he only pled guilty to be transferred to another prison and escape the alleged abuse.

After reviewing a videotape of the *Boykin* hearing, the trial court denied Rouse's request for post-conviction relief, finding that Rouse had entered his plea willingly, freely, and voluntarily. Rouse then filed a motion pursuant to CR 60.02 for post-conviction relief, which was denied on August 1, 2008.

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<sup>2</sup> *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

<sup>3</sup> Kentucky Rules of Criminal Procedure.

However, Rouse's CR 60.02 motion is not before this Court because Rouse did not file a notice of appeal and designate the final judgment in the CR 60.02 action for appellate review. *Ready v. Jamison*, 705 S.W.2d 479, 481-82 (Ky. 1986). This appeal follows.

On review of the denial of an RCr 11.42 motion, our consideration is limited to determining whether Rouse's motion "on its face states grounds that are not conclusively refuted by the record and which, if true, would invalidate the conviction." *Lewis v. Commonwealth*, 411 S.W.2d 321, 322 (Ky. 1967). If Rouse's allegations are refuted by the record or he has not convincingly demonstrated the deprivation of a substantial right, Rouse's RCr 11.42 claim must fail. *Haight v. Commonwealth*, 41 S.W.3d 436, 442 (Ky. 2001), *overruled on other grounds by Leonard v. Commonwealth*, 279 S.W.3d 151 (Ky. 2009).

A trial court may accept a criminal defendant's guilty plea to any criminal charge, but it must first ascertain that the plea is made voluntarily and with an understanding of the nature of the charge. *Edmonds v. Commonwealth*, 189 S.W.3d 558, 565 (Ky. 2006). A guilty plea is valid and entered knowingly, intelligently and voluntarily if the trial court questioned the accused to ensure he had a complete understanding of the consequences of the plea, including the waiver of constitutional rights, and the record firmly established this understanding. *O'Neil v. Commonwealth*, 114 S.W.3d 860, 863 (Ky.App. 2003).

When a defendant makes a solemn declaration in open court during his plea colloquy, his declarations carry a strong presumption of verity and cannot

be lightly disregarded despite conclusory allegations to the contrary. *Edmonds*, 189 S.W.3d at 569. The trial court is in the best position to determine whether or not a plea was entered voluntarily, knowingly, or intelligently. *Centers v. Commonwealth*, 799 S.W.2d 51, 54 (Ky.App. 1990). “In reviewing the validity of a guilty plea, an appellate court must examine the totality of the circumstances and determine whether an intelligent plea was entered voluntarily and with understanding of the charges.” *Thompson v. Commonwealth*, 147 S.W.3d 22, 41 (Ky. 2004).

After a review of the record, we conclude that the trial court did not err by finding that Rouse’s plea agreement was entered voluntarily, knowingly, and intelligently. While Rouse contends that he was motivated by fear, the trial court provided Rouse ample time to discuss this matter with counsel and specifically asked Rouse if he was under any threat to plead guilty. Rouse informed the trial court that he was entering the plea on his own volition. Further, Rouse’s claim that the Commonwealth promised him that it would secure his transfer to another prison is refuted by the record. Rouse signed a guilty plea accepting a two-year sentence for his second-degree forgery conviction and informed the trial court that no other promises had been made to induce his plea. Accordingly, in view of the totality of the circumstances, the trial court’s finding was not erroneous.

For the foregoing reasons, the order of the Graves Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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