

RENDERED: JANUARY 22, 2010; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2008-CA-000217-MR

GEORGE MILLER

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE MARY M. SHAW, JUDGE  
ACTION NO. 04-CR-002522

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: FORMTEXT FORMTEXT COMBS, CHIEF JUDGE; TAYLOR,  
JUDGE; HENRY, SENIOR JUDGE.

TAYLOR, JUDGE: George Miller brings this *pro se* appeal from a November 15,  
2007, Order of the Jefferson Circuit Court denying his motion to withdraw guilty  
plea. We affirm.

Miller was indicted upon two counts of capital murder, three counts of  
wanton endangerment (first degree), one count of operating a motor vehicle under  
the influence of intoxicants, and one count of operating a motor vehicle while his

license was revoked or suspended for driving under the influence. The charges stemmed from a motor vehicle accident. Miller was driving a vehicle while intoxicated and struck two individuals, resulting in their death. Pursuant to a plea agreement with the Commonwealth, Miller pleaded guilty to two counts of manslaughter (second degree), three counts of wanton endangerment (first degree), operating a motor vehicle under the influence of intoxicants, and one count of operating a motor vehicle while license was revoked or suspended for driving under the influence. Pursuant to the plea agreement, Miller was sentenced to a total of twenty-years' imprisonment. The final judgment sentencing Miller was entered on July 11, 2005.

Miller subsequently filed motions for shock probation that were all denied by the circuit court. In October 2007, some two years after final judgment, Miller filed a *pro se* motion to withdraw his guilty plea. The circuit court denied the motion by order entered November 15, 2007. This appeal follows.

Miller contends that the circuit court erred by denying his motion to withdraw guilty plea. Specifically, Miller argues that he did not enter into the guilty plea knowingly and that the Commonwealth coerced him to plead guilty. In support thereof, Miller argues that he was “misled . . . into believing that he would get shock probation.” Miller’s Brief at 3.

Under Kentucky Rules of Criminal Procedure (RCr) 8.10, the circuit court is vested with broad discretion when considering a motion to withdraw guilty

plea, especially after final sentence is imposed. *Murphy v. Com.*, 551 S.W.2d 838 (Ky. App. 1977); *Franklin v. Com.*, 305 Ky. 111, 203 S.W.2d 2, (Ky. 1947).

In this case, the terms of the plea agreement were clear as to shock probation:

[Miller] may file a motion for shock probation as permitted by the rules of criminal procedure. However, if [Miller] does file a motion for shock probation he agrees to serve a full six months in the penitentiary before being released on shock probation. . . . At the time that a hearing is necessary to address the motion for shock probation **the Commonwealth will take no position on shock probation leaving the issue to the court's discretion.** However, the Commonwealth will reserve the right to ask the court to hear from the victim's family at any hearing held by the court in relation to [Miller's] release. If the court, at any time, gives [Miller], either by shock or otherwise, early release [Miller] agrees to serve another six months at CCC with work release. . . . (Emphasis added.)

Under the plea agreement's unambiguous terms, the Commonwealth promised to make no recommendation upon shock probation but would leave such decision within the discretion of the circuit court. The terms of the plea agreement speak for themselves. Miller was not promised shock probation by the Commonwealth. Thus, there exists no basis to support Miller's motion to withdraw guilty plea. In sum, we hold that the circuit court did not err by denying said motion.

For the foregoing reasons, the Order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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