

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

NO. 2008-CA-002384-MR

TERRY HELM

APPELLANT

v.

APPEAL FROM TRIMBLE CIRCUIT COURT  
HONORABLE KAREN A. CONRAD, JUDGE  
ACTION NO. 07-CR-00027

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
VACATING AND REMANDING

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BEFORE: LAMBERT AND THOMPSON, JUDGES; KNOPF,<sup>1</sup> SENIOR JUDGE.

KNOPF, SENIOR JUDGE: Terry Helm was convicted – pursuant to a guilty plea – of multiple counts of unlawful transaction with a minor in the first degree and sexual abuse in the first degree, as a result of which he was sentenced to ten years’ imprisonment. On appeal, he challenges the Trimble Circuit Court’s denial of his

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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 Kentucky Revised Statutes (KRS) 21.580.

motion to withdraw his guilty plea. After our review, we vacate and remand for reasons to be set forth below.

On June 15, 2007, Helm was indicted on seven counts of unlawful transaction with a minor in the first degree<sup>2</sup> and six counts of sexual abuse in the first degree.<sup>3</sup> After his motion to suppress evidence was denied, Helm reached a plea agreement with the Commonwealth and filed a motion to enter a guilty plea as to all charges on September 10, 2008 – only five days before his trial was set to begin. In exchange for Helm’s plea, the Commonwealth agreed to recommend a ten-year sentence of imprisonment. At the ensuing guilty plea hearing, the circuit court conducted an extensive guilty plea colloquy with Helm in order to ensure that his plea was entered voluntarily, knowingly, intelligently, and with an understanding of both the charges pending against him and the consequences of entering a guilty plea.

However, on September 24, 2008, Helm moved to withdraw his guilty plea on the grounds that “he felt pressured into signing something that he did not fully understand.” Helm appeared before the circuit court on November 20, 2008. Although the circuit court judge acknowledged that Helm’s motion raised the question of the voluntariness of his guilty plea, she refused to allow him to speak on the record about this issue because of a concern that he might delve into some of the more explicit factual details of the case. The judge questioned Helm’s

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<sup>2</sup> This offense is set forth in KRS 530.064.

<sup>3</sup> This offense is set forth in KRS 510.110.

attorney about his particular concerns, but counsel was unable to elaborate on the matter. The court then concluded that Helm's guilty plea had been entered voluntarily, knowingly, and intelligently and denied his motion. Helm was subsequently adjudged guilty of the subject offenses and sentenced to ten years' imprisonment consistent with his guilty plea and the Commonwealth's recommendation.

Helm subsequently filed the current appeal, in which he challenges the circuit court's denial of his motion to withdraw his guilty plea. Kentucky Rules of Criminal Procedure (RCr) 8.10 provides that "[a]t 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." "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." *Edmonds v. Commonwealth*, 189 S.W.3d 558, 565 (Ky. 2006). "If the plea was involuntary, the motion to withdraw it must be granted; if it was voluntary, the trial court may, within its discretion, either grant or deny the motion." *Williams v. Commonwealth*, 229 S.W.3d 49, 51 (Ky. 2007); *Rigdon v. Commonwealth*, 144 S.W.3d 283, 288 (Ky. App. 2004). Where the voluntariness of a guilty plea is in question, trial courts are required 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*<sup>4</sup> inquiry into the performance of counsel[.]” *Bronk v.*

*Commonwealth*, 58 S.W.3d 482, 486 (Ky. 2001) (citation omitted).

In response to Helm’s claim that the circuit court erroneously denied his motion to withdraw his guilty plea, the Commonwealth argues that the record establishes beyond question that his plea was voluntarily entered. For example, when Helm filed his motion to enter a guilty plea, he indicated that his judgment was not impaired by drugs, alcohol, or medication and acknowledged that he had:

. . . reviewed a copy of the indictment and told my attorney all the facts known to me concerning my charges. I believe he/she is fully informed about my case. We have fully discussed, and I understand, the charges and any possible defenses to them.

Helm further indicated that no one had forced him to plead guilty or had otherwise threatened him. He also specifically acknowledged that his plea of guilty was “freely, knowingly, intelligently, and voluntarily made[.]” Helm’s attorney also signed a “Certificate of Counsel” which provided that all charges and possible defenses had been discussed with Helm and that he appeared to have understood these matters. Helm’s attorney further indicated that Helm’s guilty plea appeared to have been made freely, knowingly, intelligently, and voluntarily and that Helm’s constitutional rights had been fully explained to him.

Moreover, during his plea colloquy with the circuit court, Helm stated that he had had plenty of time to talk with his attorney about his case and that there was nothing he wanted done that had not been done. He also affirmed that he did

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<sup>4</sup> 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

not feel like he was forced into pleading guilty against his will. The plea colloquy in general was also extensive, and the circuit court judge took great care to fully explain what it meant to plead guilty and the constitutional protections being waived by doing so.

In reply, Helm contends that even given the aforementioned facts, the circuit court erred by failing to hold a hearing on his motion – specifically, by failing to allow him to personally explain why he felt that he was pressured into pleading guilty and why he felt he did not fully understand the consequences of doing so. Helm argues that without determining such, the court could not possibly have considered the totality of the circumstances surrounding the plea. *See Bronk*, 58 S.W.3d at 486. As noted above, the circuit court judge declined to allow Helm to state anything on the record as to his motion because of a concern that he would discuss explicit factual matters. This decision was made in error.

“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 involuntarily.” *Edmonds*, 189 S.W.3d at 566; *see also Williams*, 229 S.W.3d at 51. Helm’s claim here clearly encompassed an allegation that his guilty plea was not entered voluntarily because of undue pressure and a lack of explanation on the part of his attorney. Therefore, the circuit court should have allowed him to explain his reasons for wanting to withdraw his guilty plea, including “what transpired between attorney and client that led to the entry of the plea,” in an evidentiary hearing before granting or denying his motion.

*See Rodriguez v. Commonwealth*, 87 S.W.3d 8, 10-11 (Ky. 2002). Although we appreciate the court's concerns about Helm testifying as to certain factual details of the case, the court should not have prevented him from testifying altogether about the reasons why he wished to withdraw his guilty plea. Therefore, the court's order denying Helm's motion to withdraw his plea must be vacated and this matter remanded for an evidentiary hearing on the matter. In reaching this decision, we note that we make no comment as to the ultimate merit of Helm's motion.

For the foregoing reasons, the order of the Trimble Circuit Court is vacated, and this case is remanded with directions to hold an evidentiary hearing on Helm's motion to withdraw his guilty plea and to make a subsequent determination as to whether Helm should be allowed to withdraw his guilty plea.

ALL CONCUR.

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