

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

NO. 2008-CA-002326-MR

THOMAS CLYDE MAJOR

APPELLANT

v. APPEAL FROM MASON CIRCUIT COURT  
HONORABLE LEWIS D. NICHOLLS, JUDGE  
ACTION NO. 07-CR-00017

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CAPERTON AND MOORE, JUDGES; BUCKINGHAM,<sup>1</sup> SENIOR JUDGE.

CAPERTON, JUDGE: The Appellant, Thomas Clyde Major, appeals his conviction and sentence in the Mason Circuit Court following the trial court's denial of his motion to withdraw his guilty plea. Major was sentenced to ten years'

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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 the Kentucky Revised Statutes (KRS) 21.580.

imprisonment on a guilty plea to Flagrant Nonsupport and First-Degree Persistent Felony Offender. Having reviewed the record, the arguments of the parties, and the applicable law, we affirm.

Major was indicted on charges of Flagrant Nonsupport and First-Degree Persistent Felony Offender on January 26, 2007. Almost immediately thereafter, on February 8, 2007, the Commonwealth made a plea offer of five years on the nonsupport charge, with dismissal of the persistent felony offender charge, and a payment of \$3000.00. Major rejected the offer and the Commonwealth made this offer twice more prior to the time that trial was to occur on July 23, 2008.

Major had been appointed an attorney from the Department of Public Advocacy to represent him at trial. Major states that during the time leading up to trial, he attempted to inform his counsel that he had not paid his child support because he was a convicted felon and thereby could not find a job,<sup>2</sup> and because for part of the time he was supposed to be making support payments, he was incarcerated. Major also testified that he had conducted research concerning the punishments applicable to the offenses with which he was charged.

Major met with his counsel on the day of trial and had a conversation in which counsel informed Major that if he went to trial, he would be found guilty and would be sentenced to ten years, without a chance at probation. Major states that this conversation scared him and that he began to consider entering a guilty

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<sup>2</sup> Major states, in support of this assertion, that he had taken a questionnaire to local businesses asking them if they would hire convicted felons, with 95% stating that they would not, and the remaining 5% refusing to provide that information.

plea. Major's trial counsel testified during the course of the hearing that during his conversation with Major, he could not remember if he and Major specifically discussed the PFO charge. Major testified that he did not realize he was pleading guilty to the PFO charge until he was standing before the judge.

During the course of entering the guilty plea, defense counsel told the court that Major had decided to enter a guilty plea instead of having the trial that was scheduled for that day. At that time, the trial court asked what Major and the Commonwealth had worked out, and the Commonwealth responded that nothing had been worked out, and Major would be making an open plea to the Court. The Commonwealth further stated that it was "fine" with Major entering an open plea to both charges. Defense counsel then stated to the court that he had gone over the elements of both charges, as well as any defenses that Major had to them.

Major then admitted his guilt to both charges. After he did so, the trial court advised Major that the penalty range would be ten to twenty years because of the PFO charge. At that time, Major requested permission to consult with his attorney. Defense counsel advised the court that they would seek probation at sentencing, and Major stated to the court that he did not need any more time to talk with his attorney. Major acknowledged that no threats or promises had been made to him in exchange for his guilty plea. He further acknowledged that he had not paid child support, that he owed at least \$1000.00 and that he had at least two prior felony convictions. Major also stated that he was pleading guilty without threat, force, promises, or pressure from anyone to do so.

Thereafter, Major filed a motion to withdraw his guilty plea. In so doing, Major argued that his plea was not knowingly made because he was not advised by counsel as to the charges, the consequences of the charges and the amount of time that could be served as a result of a guilty plea. Major claimed that he had no intention of entering a plea to PFO First Degree, particularly after rejecting three plea deals which offered to dismiss the PFO charge altogether. Nevertheless, Major acknowledged that he has entered guilty pleas on many other occasions and was familiar with the process. He also acknowledged that he and his counsel had prepared for a previous trial date, although the trial had ultimately been postponed because the prosecutor was ill. Major acknowledged that the Commonwealth had made three plea offers to him, all for five years, and that he turned them all down immediately.

Major's trial counsel, Tom Griffiths, also testified at the hearing on Major's motion to withdraw the guilty plea. He stated that he had met with Major on at least five separate occasions and had also spoken with him by phone several times. Griffiths acknowledged that he had a large caseload and had spent "all of his time" preparing for a serious upcoming felony case which had been awaiting trial for two years, and that, "To say I put it (Major's case) on the backburner is not strong enough. I pretty much took it off the stove."<sup>3</sup>

Nevertheless, counsel stated that he had discussed plea deals with Major several times, and had in fact discussed a plea offer in depth on March 10,

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<sup>3</sup> See VR No. 1, 10/23/08; 2:11:57.

2008, the date the trial was initially to be held. Counsel stated that Major advised him that he did not want that deal, and that they made a counteroffer to the Commonwealth, which was rejected. Griffiths also acknowledged that discovery was exchanged and stated that the defense they had prepared to present was that Major had not been able to pay his child support because he could not get a job as a result of his incarceration and felony record. Griffiths testified that he and Major did not talk much about the PFO charge that morning, but did discuss the penalty range associated with the PFO charge. Griffiths also testified that he told Major that he did not believe Major would get probation if he went to trial. Griffiths stated that he gave Major the best advice he could based upon the facts of the situation.

On November 14, 2008, the trial court denied Major's motion to withdraw the guilty plea. In so doing, it found that Major had entered a knowing and voluntary guilty plea and that Major fully understood what he was doing. The court further found that Major was well-represented, that he met with his counsel on numerous occasions prior to trial and that his attorney was present and ready to proceed with the trial. After denying Major's motion, the court sentenced him to ten years' imprisonment. This appeal followed.

On appeal, Major argues that the trial court erred to his substantial prejudice in refusing to allow him to withdraw his guilty plea in this matter. Major argues that his plea was not knowingly and voluntarily made because he was not advised by counsel as to the charges, the consequences of those charges, and the

amount of time that they carried. Major asserts that he had no intention of entering a plea to PFO First Degree, particularly after turning down plea offers that agreed to dismiss the PFO altogether. In response, the Commonwealth argues that the trial court was within its discretion to deny Major's motion because the plea was knowing, voluntary, and intelligent, and that changing one's mind is an insufficient reason to withdraw a plea. We agree.

It is in the trial court's discretion pursuant to RCr 8.10 whether to allow a defendant to withdraw his guilty plea. *See also Bronk v. Commonwealth*, 58 S.W.3d 482, 486 (Ky. 2001). A trial court abuses its discretion when it renders a decision which is arbitrary, unreasonable, unfair, or unsupported by legal principles. *Edmonds v. Commonwealth*, 189 S.W.3d 558, 566 (Ky. 2006). The inquiry into the circumstances of the plea as it concerns voluntariness is inherently fact-sensitive. *Id.* Accordingly, the trial court's determination as to whether the plea was voluntarily entered is reviewed by appellate courts under the clearly erroneous standard. *Id.*

Previously, we have succinctly summarized the law concerning the validity of guilty pleas as follows:

In determining the validity of guilty pleas in criminal cases, the plea must represent a voluntary and intelligent choice among the alternative course of action open to the defendant. *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970); *Sparks v. Commonwealth*, 721 S.W.2d 726 (Ky.App. 1986). The United States Supreme Court has held that both federal and state courts must satisfy themselves that guilty pleas are voluntarily and intelligently made by competent

defendants. *Brady v. United States*, 397 U.S. 742, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970). Since pleading guilty involves the waiver of several constitutional rights, including the privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one's accusers, a waiver of these rights cannot be presumed from a silent record. The court must question the accused to determine that he has a full understanding of what the plea connotes and of its consequences, and this determination should become part of the record. *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 1712, 23 L.Ed.2d 274 (1969); *Sparks, supra*.

The validity of a guilty plea must be determined not from specific key words uttered at the time the plea was taken, but from considering the totality of circumstances surrounding the plea. *Kotas v. Commonwealth*, 565 S.W.2d 445, 447 (Ky. 1978); [\*Lynch v. Commonwealth\*, 610 S.W.2d 902 \(Ky. App. 1980\)](#); *Sparks, supra*. These circumstances include the accused's demeanor, background and experience, and whether the record reveals that the plea was voluntarily made. *Sparks, supra*, [\*Littlefield v. Commonwealth\*, 554 S.W.2d 872 \(Ky. App. 1977\)](#). The trial court is in the best position to determine if there was any reluctance, misunderstanding, involuntariness, or incompetence to plead guilty. *Littlefield, supra*, at 874. See *Kotas, supra*, at 447. Solemn declarations in open court carry a strong presumption of verity. *Blackledge v. Allison*, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977).

*Centers v. Commonwealth*, 799 S.W.2d 51, 54 (Ky.App. 1990).

Having reviewed the record in the matter *sub judice*, we are of the opinion that Major entered his plea knowingly, intelligently, and voluntarily. We are not persuaded that his rejection of previous plea offers is proof that he did not understand the plea he made before the court at the time that other offers were no longer available from the Commonwealth. We believe the court below was correct

in its determination that it was not required to allow Major to withdraw the plea simply because he changed his mind. While Major's counsel may have been busy with many cases, our review of the record reveals that he provided adequate counsel to Major concerning the charges he faced and the consequences of the plea that he entered. Major entered this plea knowingly, voluntarily and intelligently before the court. Accordingly, we do not believe that the court abused its discretion in denying his motion to withdraw that plea.

Wherefore, for the foregoing reasons, we hereby affirm the December 12, 2008, Judgment and Sentence on Plea of Guilty entered by the Honorable Lewis D. Nicholls of the Mason Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

J. Brandon Pigg  
Department of Public Advocacy  
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Jack Conway  
Attorney General of Kentucky  
  
Todd. D. Ferguson  
Assistant Attorney General  
Frankfort, Kentucky