

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

NO. 2013-CA-001034-MR

IRVIN W. PRUITT, III

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE BARRY WILLETT, JUDGE  
ACTION NO. 12-CR-000402

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: MAZE, MOORE, AND VANMETER, JUDGES.

VANMETER, JUDGE: Irvin W. Pruitt, III appeals from the May 14, 2013, order of the Jefferson Circuit Court which denied his motion to withdraw his guilty plea. Because we hold that the trial court did not abuse its discretion when it denied Pruitt's motion, we affirm.

On December 15, 2011, an argument arose between Pruitt and his then live-in girlfriend, Tonisha Pearson. The argument escalated and Pruitt assaulted Pearson for several hours, during which he punched her and strangled her multiple times. At one point, Pruitt strangled Pearson to the point that she almost passed out. Pruitt forced Pearson into his vehicle against her will where he forced her to remain and continued assaulting her. Pearson was eventually able to escape and contact her sister for assistance. When Pearson's sister arrived, Pruitt fled. Pearson sustained injuries to her face and neck. Following Pruitt's arrest for the assault, Pruitt contacted Pearson approximately sixty-eight times in an attempt to coerce her testimony.

As a result of the assault on Pearson, Pruitt was indicted with kidnapping; unlawful imprisonment, first degree; wanton endangerment, first degree (three counts); tampering with a witness; and assault, fourth degree (three counts). Pruitt's criminal history also qualified him as a first-degree persistent felony offender ("PFO").

Trial was scheduled for April 23, 2013, at which time Pearson failed to arrive for her subpoenaed testimony. A warrant was issued for Pearson and the trial court issued a recess. During the recess, Pearson was located and brought to court. Once before the trial court, Pearson indicated that Pruitt had been having third parties contact her and tell her how to testify. Pearson requested that Pruitt be forbidden from contacting Pearson or having anyone else contact her. Also at this time, the Commonwealth indicated that they were negotiating a plea agreement

with Pruitt. Under the agreement, the Commonwealth would dismiss the kidnapping charge and Pruitt would plead guilty to all remaining charges. In addition, the Commonwealth would recommend a sentence of five years, enhanced to ten years by Pruitt's PFO status, and Pruitt would agree not to file for probation or shock probation.

Following the disclosure of the Commonwealth's offer, Pruitt began to address the court. He requested a hearing in order to ascertain what Pearson's testimony would be, should Pruitt choose to go to trial. Pruitt also expressed displeasure with the Commonwealth's offer of ten years. The court adjourned to allow the parties to finalize the agreement.

Later that afternoon, court reconvened and began a guilty plea colloquy, pursuant to *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). Pruitt interrupted the *Boykin* colloquy, proceeded to discuss the facts of the case, and again requested to know what Pearson would say in the event that she testified at trial. Pruitt then informed the court that he may want to go to trial depending on what Pearson's testimony would be. The plea colloquy continued with several interruptions from both Pruitt and Pearson. Pruitt appeared uncertain about the agreement. He stated that the statute did not make sense to him; he stated that he felt as though he was being "railroaded," he denied the facts of the plea agreement but stated that he did not wish to go to trial; and he stated that he would plead guilty to appease everyone. Based on Pruitt's behavior and

statements, the trial court rejected the plea and scheduled the case for trial the following morning.

When the parties reconvened the following day, April 24, 2013, the parties indicated again that Pruitt wished to plead guilty. The court then began a new *Boykin* colloquy, during which Pruitt acknowledged that he had read and signed the agreement and that he understood the charges and potential penalties. Pruitt inquired as to whether he was entering an *Alford* plea, to which the court responded that he was not. Pruitt acknowledged that he was aware of the rights he was waiving and further acknowledged satisfaction with his legal representation.

The trial court next inquired if Pruitt had a history of mental health issues. Pruitt answered that he had been diagnosed with Post-Traumatic Stress Disorder, Bipolar Disorder, and something else for which he could not recall the name. Pruitt further blamed his “episode” in court the day prior on his mental disorders, and stated that he was feeling better. He further stated that he did not take medication for his disorders because he did not care for the side effects, but confirmed that he was acting knowingly and intelligently. The Commonwealth made a motion for a competency evaluation and that motion was denied. The trial court found that Pruitt was competent and such finding was based on the court’s interactions and observations of Pruitt, as well as Pruitt’s counsel’s observations and opinion that Pruitt understood the plea and was capable of participating in his own defense. The trial court then found that Pruitt understood the charges against him; that there was a factual basis for the guilty plea; and that Pruitt had

knowingly, voluntarily, and intelligently waived his constitutional rights. The guilty plea was accepted and Pruitt was sentenced according to the agreement. Pruitt waived separate sentencing and the trial court entered its judgment of conviction waiving separate sentencing on April 30, 2013.

On May 2, 2013, Pruitt's counsel, at the request of Pruitt, filed a motion to withdraw his guilty plea, pursuant to Kentucky Rules of Criminal Procedure (RCr) 8.10. The trial court found that Pruitt had entered into his plea knowingly, intelligently, and voluntarily, and denied his motion. This appeal followed.

“A guilty plea is valid only when it is entered intelligently and voluntarily.” *Bronk v. Commonwealth*, 58 S.W.3d 482, 486 (Ky. 2001). Moreover, a trial court must make an affirmative showing, on the record, that a guilty plea is voluntary and intelligent before it may be accepted. *Boykin*, 395 U.S. at 241-42, 89 S.Ct. at 1711. A guilty plea may be withdrawn prior to judgment under the discretion of the trial court. *Edmonds v. Commonwealth*, 189 S.W.3d 558, 565 (Ky. 2006); RCr 8.10. With respect to a defendant's motion to withdraw a guilty plea *after sentencing*, a trial court similarly has broad discretion and may only grant the motion when “it appears that the accused's consent to plead guilty was unwillingly given and made under circumstances of fear, deceit, or coercion.” *Kidd v. Commonwealth*, 255 Ky. 498, 74 S.W.2d 944, 946 (1934).

In the case before us, Pruitt offered no grounds for his request to withdraw his guilty plea of April 24, 2013. Although he cites to several

circumstances surrounding his attempt to enter a guilty plea on April 23, 2013, that plea was denied and therefore does not form the basis of this appeal. The Supreme Court of Kentucky has held that a motion to withdraw a guilty plea “must allege with particularity specific facts which, if true, would render the plea involuntary . . . , would render the plea so tainted by counsel's ineffective assistance . . . , or would otherwise clearly render the plea invalid.” *Commonwealth v. Pridham*, 394 S.W.3d 867, 874 (Ky. 2012). Pruitt makes no such allegations. In addition, our review of the record confirms that the trial court conducted the appropriate *Boykin* colloquy which confirmed that Pruitt entered into his plea both intelligently and voluntarily. *Boykin*, 395 U.S. 238. Because Pruitt failed to allege any deficiency with his guilty plea, in particular that the plea was made under the circumstances of fear, deceit, or coercion, we find no error with the trial court’s denial of his motion.

For the foregoing reasons, the May 14, 2013, order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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