

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2014-CA-000307-MR

LEANN PERGRAM

APPELLANT

v. APPEAL FROM POWELL CIRCUIT COURT  
HONORABLE FRANK A. FLETCHER, JUDGE  
ACTION NO. 12-CR-00150

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE, CHIEF JUDGE; NICKELL AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Leann Pergram appeals from a January 24, 2014, judgment and sentence on plea of guilty of the Powell Circuit Court.<sup>1</sup> The judgment found Pergram guilty of robbery in the first degree, accepting a bribe, and promoting contraband in the first degree, and sentenced her to a total of ten-years'

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<sup>1</sup> Leann Pergram pleaded guilty in open court on December 13, 2013, and executed guilty plea agreements with the Commonwealth of Kentucky on December 12, 2013.

imprisonment, the sentences to run concurrently in accordance with her plea agreement.<sup>2</sup> For the reasons stated, we affirm.

Pergram was indicted on October 17, 2012, for one count of robbery in the first degree. On December 13, 2013, Pergram entered a guilty plea. At that time, Pergram pleaded guilty to the robbery charge as well as two other charges contained in unrelated indictments: accepting a bribe and promoting contraband in the first degree. In exchange for her plea, the Commonwealth agreed to recommend a total concurrent sentence of ten years. Sentencing was scheduled for January 8, 2014.

On January 8, 2014, Pergram moved in open court to withdraw her guilty plea. Pergram informed the trial court that she had consulted with another attorney, who believed Pergram had a good chance of prevailing at trial. The trial court then ordered a continuance to January 22, 2014, to allow the judge to review the record, including her plea in open court on December 13, 2013, and to fully consider the motion. At the hearing on January 22, 2014, the trial court denied Pergram's motion to withdraw her guilty plea. In support of the court's ruling, the circuit judge stated that he had reviewed the record and that Pergram had specifically been asked if she committed the crimes, to which she answered affirmatively. On January 24, 2014, the final judgment and sentence on plea of guilty was entered, for which Pergram was sentenced to ten-years' imprisonment in accordance with the plea agreement. This appeal followed.

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<sup>2</sup> The maximum sentence for robbery in the first degree, a Class B felony is twenty-years' imprisonment. Kentucky Revised Statutes 532.060.

Pergram's sole argument on appeal is that the trial court erred when it denied her motion to withdraw her guilty plea. We review a trial court's decision to grant or deny a motion to withdraw a guilty plea under the abuse of discretion standard. *Prater v. Com.*, 421 S.W.3d 380 (Ky. 2014). "The test for an abuse of discretion 'is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.'" *Anderson v. Com.*, 231 S.W.3d 117, 119 (Ky. 2007) (citing *Goodyear Tire & Rubber Co. v. Thompson*, 11 S.W.3d 575, 581 (Ky. 2000)).

The withdrawal of pleas is governed by Kentucky Rules of Criminal Procedure (RCr) 8.10, which states, in pertinent part, "[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." In order to succeed on a motion to withdraw a plea, "the movant must allege with particularity specific facts which, if true, would render the plea involuntary." *Com. v. Pridham*, 394 S.W.3d 867, 874 (Ky. 2012).

This Court has reviewed the videotape of Pergram's plea in open court on December 13, 2013. We have also reviewed the videotapes of her motion to withdraw her plea in open court on January 8, 2014, less than a month later. Pergram did not allege on January 8, 2014, that her plea was entered involuntarily which she had previously acknowledged was made voluntarily at the hearing on December 13, 2013. Instead, Pergram stated that she had a change of heart: she had spoken to another attorney who told her she would have a good chance to be

exonerated on the charges.<sup>3</sup> However, she had not retained that attorney to represent her nor has that attorney appeared on her behalf at any time in this proceeding. As our Supreme Court recently stated, “[m]ere second thoughts, however, do not entitle one to relief from one's guilty plea.” *Pridham*, 394 S.W.3d at 885.

Pergram’s brief filed in this case also infers that the trial court’s failure to appoint new counsel, *sua sponte*, so that Pergram could pursue her motion to withdraw, was an abuse of discretion. This argument is not only unpreserved, but fails to address the original basis for the motion or otherwise offer any evidence whatsoever that her plea was made involuntarily. The record contains both written and verbal confirmation from Pergram that she committed the crimes for which she was pleading guilty, that her plea was being entered voluntarily, and that she was guilty. Because Pergram has failed to establish that her plea was made involuntarily, or present any other legal basis to set aside the plea, we conclude that the trial court’s denial of Pergram’s motion to withdraw her guilty plea was not an abuse of discretion.

For the foregoing reasons, the January 24, 2014, judgment and sentence on plea of guilty entered by the Powell Circuit Court is affirmed.

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<sup>3</sup> On page 2 of Pergram’s brief, Pergram states that during the hearing on January 8, 2014, “[t]he circuit court then stated that [Pergram] had appeared nervous and basically felt that the guilty plea was not of her own free will and accord, then promised to look at it further. *Id.* 10:42:00.” Upon review of the videotape recording from this hearing, the trial court in fact did not make such a statement acknowledging the merits of Pergram’s motions. Rather, the judge actually restated for the record the substance of the argument that Pergram had just immediately before stated in the judge’s presence to support her motion. While we have treated this error as mere oversight or clerical error, we caution all counsel that the intentional misrepresentation of the record on appeal may be grounds for sanctions.

ALL CONCUR.

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