RENDERED: AUGUST 12, 2016; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001817-MR

KEVIN MORRISON — APPELLANT

v.

APPEAL FROM BULLITT CIRCUIT COURT
HONORABLE RODNEY BURRESS, JUDGE
ACTION NO. 13-CR-00157

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: NICKELL, STUMBO, AND VANMETER, JUDGES.

VANMETER, JUDGE: Kevin Morrison appeals from the Bullitt Circuit Court's October 17, 2014, order denying his motion to withdraw his guilty plea. For the following reasons, we affirm.[1]

[1] CR (Kentucky Rules of Civil Procedure) 11 requires that "[e]very pleading, motion and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name[.]" CR 76.12(6) further requires of briefs submitted to the Court of Appeals: "[e]very brief shall bear on the front cover a signed statement, in accordance with Rule 5.03, by the attorney or party that service has been made as required by this Rule, which statement shall

After attempting to steal a battery from AutoZone in Shepherdsville, and then attempting to hit an AutoZone employee with his truck, Morrison was indicted for Robbery First Degree, Wanton Endangerment First Degree, Attempted Assault Second Degree, Reckless Driving, Driving on a Suspended Operator's License, and Persistent Felony Offender First Degree. Morrison's original trial counsel filed a motion to have him evaluated for competency. Dr. Ed Connor, a licensed clinical psychologist, performed the evaluation on November 12, 2013.

Dr. Connor's report deemed Morrison competent, but stated that Morrison had described a long history of alcohol and substance abuse, as well as having been electrocuted and suffering several head injuries. Dr. Connor believed that a neuropsychological evaluation, looking for frontal lobe damage, would be helpful because some possibility existed that Morrison would be unable to "cope with or rationally evaluate[] his choices in a real time guilty plea negotiation process." Dr. Connor further noted that if Morrison had frontal lobe damage, he might have difficulty processing information during a court proceeding, and not be fully informed. Finally, Dr. Connor noted that persons with neuropsychological damage tend to make impulsive decisions and give "acquiescence responses," or

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identify by name the persons so served." The briefs submitted on behalf of Morrison do not appear to have been signed, but rather a stamp or electronically-produced printed signature was used. We question whether such a "signature" comports with the spirit or intent of the Civil Rules. We advise that in the future, all briefs submitted to this court must be hand-signed by the submitting attorney or party.

affirmative responses when the person does not want to admit that they did not follow the conversation.

On March 18, 2014, Morrison and the victim participated in mediation, which resulted in Morrison pleading guilty to an amended charge of Wanton Endangerment and a sentence of five years' imprisonment. One week later, Morrison filed a motion to withdraw his guilty plea. On May 14, 2014, Morrison's new trial counsel filed another motion to have Morrison evaluated for competency based on Dr. Connor's report. After a hearing, at which Dr. Connor restated his opinion that Morrison was competent to stand trial and could conform his behavior to the requirements of the law, the trial court denied Morrison's motion for a neuropsychological evaluation, finding that the results would add nothing to the proceedings.

At the hearing on Morrison's motion to withdraw his guilty plea, Morrison argued that his guilty plea was not knowing or intelligent because he had not seen Dr. Connor's report concerning his competency prior to his decision to plead guilty and that he had pled guilty because he was "scared and wanted to get it over with." Morrison's counsel further explained that she had serious questions as to whether Morrison understood the charges against him. The trial court denied Morrison's motion to withdraw his guilty plea orally on August 28 and again in a

written order on October 17, 2014, and Morrison was sentenced to five years' imprisonment in accordance with the plea agreement. This appeal follows.

On appeal, Morrison argues that he did not knowingly or intelligently enter into his guilty plea, and that the trial court therefore erred by denying his motion to withdraw his plea. The inquiry into whether a guilty plea is voluntary is "inherently fact sensitive," and thus, the determination is reviewed for clear error, or whether the determination was supported by substantial evidence. *Edmonds v. Commonwealth*, 189 S.W.3d 558, 566 (Ky. 2006).

RCr[2] 8.10 provides, "[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." Defendants waive many constitutional rights when entering a guilty plea; those rights may only be waived if the guilty plea is entered into knowingly, intelligently, and voluntarily. *Williams v. Commonwealth*, 229 S.W.3d 49, 51 (Ky. 2007); RCr 8.08; *Boykin v. Alabama*, 395 U.S. 238, 244, 89 S.Ct. 1709, 1712-13, 23 L.Ed.2d 274 (1969). Therefore, "the discretion to deny a motion to withdraw a guilty plea exists only after a determination has been made that the plea was voluntary." *Rodriguez v. Commonwealth*, 87 S.W.3d 8, 9 (Ky. 2002).

[2] Kentucky Rules of Criminal Procedure.

The voluntariness of a guilty plea is "determined not from specific key words uttered at the time the plea is taken, but from considering the **totality of circumstances** surrounding the plea." *Centers v. Commonwealth*, 799 S.W.2d 51, 54 (Ky. App. 1990) (emphasis added). A court should look to "the accused's demeanor, background, and experience, and whether the record shows the plea was voluntarily made." *Id*.

Morrison argues that the trial court did not examine the totality of the circumstances surrounding his guilty plea. He alleges that the fact that he was not provided with a copy of Dr. Connor's report prior to his plea rendered his plea unknowing and unintelligent. He further claims that his lack of understanding regarding the change of the charges from robbery and assault to wanton endangerment, and the fact that he was not informed of a witness statement indicating that he had not actually hit the AutoZone employee with his car, resulted in an invalid guilty plea.

However, from our review of the record, the trial court held the requisite, meaningful hearing on the voluntariness of Morrison's guilty plea. During that hearing, the court heard all circumstances surrounding Morrison's mediation and decision to accept the plea deal offered by the prosecution. During the plea colloquy, Morrison attested that he had discussed his plea with his attorney, had all the time he needed to speak privately with his attorney, and was

satisfied with her services. He also attested that his attorney had not failed to do anything he requested. The trial court is in the best position to determine if any reluctance, misunderstanding, involuntariness, or incompetence to plead guilty existed. *Kotas v. Commonwealth*, 565 S.W.2d 445, 447 (Ky. 1978); *Littlefield v. Commonwealth*, 554 S.W.2d 872, 874 (Ky. App. 1977). In addition, "solemn declarations in open court carry a strong presumption of verity." *Edmonds v. Commonwealth*, 189 S.W.3d 558, 569 (Ky. 2006) (internal citations omitted). Since Dr. Connor's opinion definitively stated that Morrison was competent, we find no other reason to conclude that Morrison's guilty plea was not voluntary, knowing, and intelligent. We believe the trial court correctly determined that Morrison knowingly entered his guilty plea and correctly denied Morrison's motion to withdraw that plea.

For the above reasons, the order of the Bullitt Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Julia Pearson
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

Thomas A. Van De Rostyne
Assistant Attorney General
Frankfort, Kentucky