

NO. 96-CA-2847-MR

WALTER LYLE MINTON

APPELLANT

V. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JOHN R. ADAMS, JUDGE
ACTION NO. 96-CR-0223

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

* * * * *

BEFORE: GARDNER, JOHNSON and MILLER, JUDGES.

GARDNER, JUDGE: Walter Minton (Minton) appeals from his judgment of conviction in Fayette Circuit Court for third-degree burglary and second-degree persistent felony offender (PFO II). Minton contends that the circuit court erred by refusing to allow him to withdraw his guilty plea. We affirm.

In March 1996, a grand jury indicted Minton for third-degree burglary, first-degree criminal mischief, first-degree persistent felony offender (PFO I) and possession of a police radio, a misdemeanor. In July 1996, Minton was reindicted on the PFO I charge in order to correct information in the PFO I count.

The Commonwealth made an offer to Minton. In August 1996, Minton and his co-defendant pled guilty to third-degree

burglary and an amended charge of PFO II. The other charges were dropped. The Commonwealth recommended five years for the burglary charge, to be enhanced to seven years based on the PFO II charge. The circuit court examined Minton during the entry of the guilty plea, and Minton signed the standard form entering a guilty plea and waiving further proceedings. After questioning Minton, the circuit court accepted the guilty plea.

On September 27, 1996, Minton sought to withdraw his guilty plea. The circuit court granted Minton a week in order to file a motion stating his grounds for withdrawing his guilty plea. Minton contended that he did not knowingly and intelligently enter the guilty plea, because he did not enter the building, thus his conduct did not constitute burglary. The circuit court denied Minton's motion to withdraw his guilty plea, and sentenced him in accordance with the Commonwealth's recommendation. Minton has now appealed to this Court.

Minton argues to this Court that the circuit court abused its discretion by denying his motion to withdraw his guilty plea. After reviewing the record below, we have uncovered no error or abuse of discretion.

Kentucky Rule of Criminal Procedure (RCr) 8.10 states, "[a]t any time before judgment the court may permit the plea of guilty or guilty but mentally ill, to be withdrawn and a plea of not guilty substituted." The granting of permission to withdraw a guilty plea and substitute a plea of not guilty is a matter within the sound discretion of the trial court. Anderson v. Commonwealth,

Ky., 507 S.W.2d 187, 188 (1974); Hurt v. Commonwealth, Ky., 333 S.W.2d 951, 953 (1960). A party must show an abuse of discretion by the trial court in refusing to allow withdrawal of a guilty plea. Anderson v. Commonwealth, 507 S.W.2d at 188. See also Maxwell v. Commonwealth, Ky., 602 S.W.2d 169, 170 (1980).

Generally, a guilty plea must represent a voluntary and intelligent choice among the alternative courses of action open to a defendant. North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970); Centers v. Commonwealth, Ky. App., 799 S.W.2d 51, 54 (1990); Sparks v. Commonwealth, Ky. App., 721 S.W.2d 726 (1986). The trial court must determine that a defendant's guilty plea is intelligent and voluntary, and this determination must appear in the record. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 74 (1969); Centers v. Commonwealth, 799 S.W.2d at 54. The validity of a guilty plea depends upon the particular facts and circumstances including the background, experience and conduct of the accused. Kotas v. Commonwealth, 565 S.W.2d at 447.

The record in the instant case shows that Minton's guilty plea was voluntarily and intelligently entered. The circuit court questioned Minton extensively about his plea and about the circumstances of the crime to which Minton was pleading guilty. Minton acknowledged that he had conferred with his counsel, was satisfied with his representation, understood his constitutional rights and knew that he was waiving them by pleading guilty. He told the court that he had aided and abetted in the burglary by

breaking out a window; knowing that his co-defendant would enter with the intent to remove drugs from the facility.

Minton and his counsel before the circuit court both filed motions to withdraw his plea. Minton's counsel stated that he did not make a knowing and intelligent waiver of further proceedings. Minton in his handwritten motion stated in part that upon further investigation, he realized that he had not committed burglary. As earlier stated, the record refuted Minton's assertions, and the circuit court certainly did not abuse its discretion by declining to allow Minton to withdraw his guilty plea. The record shows that Minton's guilty plea was validly entered and that there was a factual basis to support his conviction for third-degree burglary. See Kentucky Revised Statute (KRS) 511.040. See also KRS 502.020.

For the foregoing reasons, this Court affirms the judgment of the Fayette Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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