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NOT TO BE PUBLISHED

**Commonwealth Of Kentucky**  
**Court Of Appeals**

NO. 2003-CA-001392-MR

BRIAN SPRINGER

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT  
HONORABLE JOHN D. MINTON, JR., JUDGE  
ACTION NOS. 01-CR-00211 & 01-CR-00211-002

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING  
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BEFORE: BUCKINGHAM, JOHNSON, AND KNOPF, JUDGES.

KNOPF, JUDGE: Brian Springer appeals from a judgment of the Warren Circuit Court, entered June 26, 2003, convicting him of twenty-two counts of felony theft by deception<sup>1</sup> and sentencing him to a total of ten years' imprisonment. Springer contends that the trial court abused its discretion by denying his motion

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<sup>1</sup> KRS 514.040.

to withdraw his guilty plea. Convinced that the trial court did not abuse its discretion, we affirm.

In March 2001, the Warren County grand jury indicted Springer on 104 counts of theft by deception and complicity to theft by deception. The Commonwealth alleges that Springer sold certificates of deposit to several dozen investors by falsely representing that the certificates would mature in one year when in fact they could not be redeemed for twenty years. Trial was set for February 6, 2003. On February 3, 2003, Springer entered an Alford plea<sup>2</sup> to twenty-two of the theft counts in exchange for the dismissal of the remaining counts and the ten-year sentence noted above. During the plea colloquy Springer indicated that he understood his trial-related rights but wished to waive those rights notwithstanding his asserted innocence because the Commonwealth would be able to introduce evidence—testimony by the duped investors—strongly indicative of guilt. Final sentencing was scheduled for June 26, 2003.

On May 29, 2003, Springer moved to withdraw his plea on the ground that he had obtained exculpatory evidence and wished to assert his innocence at trial. The trial court conducted an evidentiary hearing on June 26, 2003. Springer testified that at a deposition in a related matter he had

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<sup>2</sup> North Carolina v. Alford, 400 U.S. 25, 27 L. Ed. 2d 162, 91 S. Ct. 160 (1970).

obtained two documents, a disclosure statement by the bank that had issued the certificates and a brokerage agreement by the brokerage that distributed them. Allegedly the documents indicate the terms of the certificates including the requirement that customers leave their funds invested for twenty years. Although Springer testified that if he had obtained the documents earlier he would not have pled guilty, when the court asked him to explain what bearing the documents had on the charges against him, he was not able to do so. The court concluded that the documents did not entitle Springer to withdraw his plea and sentenced him accordingly. It is from that determination that Springer has appealed.

A criminal defendant has no constitutional right to plea bargain,<sup>3</sup> but when the state authorizes and engages in such bargaining it must do so in a manner that is fundamentally fair.<sup>4</sup> Before accepting a guilty plea, the court must assure itself, on the record, that the defendant's waiver of his right to trial and all that right entails is knowing and voluntary.<sup>5</sup>

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<sup>3</sup> Commonwealth v. Corey, Ky., 826 S.W.2d 319 (1992); Cobb v. Commonwealth, Ky. App., 821 S.W.2d 817 (1992).

<sup>4</sup> Brady v. United States, 397 U.S. 742, 25 L. Ed. 2d, 90 S. Ct. 1463 (1970); Boykin v. Alabama, 395 U.S. 238, 23 L. Ed. 2d 274, 89 S. Ct. 1709 (1969).

<sup>5</sup> Boykin v. Alabama, *supra*.

A voluntary plea is thus a solemn undertaking and is not to be undone merely because the defendant has had a change of heart.<sup>6</sup> Under RCr 8.10 the trial court may permit the defendant to withdraw his plea, but it should not do so absent a substantial reason. The trial court may not reject a bargained-for sentence, for example, without giving the defendant an opportunity to withdraw his plea.<sup>7</sup> Otherwise motions to withdraw a plea are addressed to the trial court's sound discretion.<sup>8</sup> When the court should not have accepted the plea in the first place, because it did not satisfy constitutional standards of voluntariness, it has been held an abuse of discretion to deny a motion to withdraw.<sup>9</sup>

Other factors courts have found helpful in assessing the merits of a motion to withdraw a guilty plea are the length of time between the plea and the motion, the reason for any delay, whether the defendant has admitted or denied guilt, the defendant's background, his familiarity with the criminal justice

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<sup>6</sup> United States v. Hyde, 520 U.S. 670, 137 L. Ed. 2d 935, 117 S. Ct. 1630 (1997).

<sup>7</sup> RCr 8.10.

<sup>8</sup> Rodriguez v. Commonwealth, Ky., 87 S.W.3d 8 (2002); Anderson v. Commonwealth, Ky., 507 S.W.2d 187 (1974).

<sup>9</sup> Rodriguez v. Commonwealth, *supra*; Maxwell v. Commonwealth, Ky., 602 S.W.2d 169 (1980).

system, and potential prejudice to the Commonwealth.<sup>10</sup> None of these factors or precedents suggests that the trial court abused its discretion in this case.

Springer asserts that his plea was not voluntary. As that term is ordinarily understood, however, it clearly describes Springer's plea. He does not claim to have been coerced, misled, incapacitated, or inadequately represented, the usual reasons for deeming a plea involuntary. He claims, rather, that his plea was rendered "involuntary" after the fact by discovery of the bank and brokerage documents. The constitution does not require, however, that the defendant be perfectly informed before entering his plea;<sup>11</sup> it requires only that he understand that the plea entails the waiver of the many trial-related constitutional rights and that the waiver is freely undertaken. The record of the plea colloquy demonstrates that Springer had that understanding and chose freely. There is no reason to invalidate his plea.

As noted above, however, under RCr 8.10 the court may permit even a valid plea to be withdrawn if the defendant establishes an adequate reason. Being legally innocent of a

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<sup>10</sup> United States v. Mader, 251 F.3d 1099 (6<sup>th</sup> Cir. 2001); United States v. Spencer, 836 F.2d 236 (6<sup>th</sup> Cir. 1987).

<sup>11</sup> Commonwealth v. Wirth, Ky., 936 S.W.2d 78, 82 (1996).

crime is such a reason.<sup>12</sup> "However, a blanket claim of innocence does not mandate the court to allow a defendant to withdraw his plea. The claim must be supported by credible evidence."<sup>13</sup> The trial court found that Springer's proffered documents did not satisfy this evidentiary requirement. The documents have not been made a part of the record before us, so we must assume that they support the trial court's skepticism.<sup>14</sup> Even without this assumption, we agree with the trial court that Springer's failure to explain the relevance of the documents undermines his claim that they are exculpatory. If they were exculpatory, he should have been able to explain how. The trial court thus did not abuse its discretion when it denied Springer's motion to withdraw his plea. Accordingly, we affirm the June 26, 2003, judgment of the Warren Circuit Court.

ALL CONCUR.

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<sup>12</sup> State v. McCallum, 561 N. W. 2d 707 (Wis. 1997).

<sup>13</sup> United States v. Gomez-Orozco, 188 F. 3d 422, 425 (7<sup>th</sup> Cir. 1999) (citations omitted); United States v. Hodges, 259 F. 3d 655 (7<sup>th</sup> Cir. 2001).

<sup>14</sup> Commonwealth v. Thompson, Ky., 697 S.W.2d 143 (1985).