

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2005-CA-001081-MR

JEFFREY CASTILE

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT  
HONORABLE CRAIG Z. CLYMER, JUDGE  
ACTION NO. 03-CR-00198

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DYCHE AND GUIDUGLI, JUDGES; BUCKINGHAM, SENIOR JUDGE.<sup>1</sup>

GUIDUGLI, JUDGE: Jeffrey Castile has appealed from the McCracken Circuit Court's May 18, 2005, Final Judgment and order denying his motion to withdraw his guilty plea to Third Degree Sexual Abuse. We affirm.

On June 11, 2003, the McCracken County grand jury indicted Castile on one count of First Degree Sexual Abuse,<sup>2</sup> a Class D Felony, for subjecting a child under the age of 12 to

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<sup>1</sup> Senior Judge David C. Buckingham, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

<sup>2</sup> KRS 510.110.

sexual contact during the winter and spring of 2003. The victim was A.L., the three-year-old daughter of H.L., whom Castile had married in May 2003. Jeff and H.L. separated in June and were eventually divorced in early 2004.<sup>3</sup> For the majority of the case, Castile was represented by private counsel, Emily Ward Roark, and by Florida attorney Charles D. Jamieson, who apparently specializes in sexual abuse cases.<sup>4</sup> The case was assigned to Judge Craig Z. Clymer.

Following extensive litigation, Castile and the Commonwealth reached an agreement in August 2004 that he would plead guilty to an amended count of sexual misconduct, with a recommended sentence of sixty days and no contact with the victim. Judge R. Jeffery Hines signed the judgment accepting the guilty plea on August 27, in place of the absent Judge Clymer. On September 3, Judge Clymer entered an order rejecting the plea agreement, indicating that the court would only accept a plea that included the requirements that Castile complete a two-year sex offender program and register as a sex offender.

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<sup>3</sup> This Court shall take judicial notice of the record in Quertermous v. Loveless, Livingston Circuit Court No. 04-CI-00016, addressing the custody of A.L. The Livingston Circuit Court's order awarding sole custody of A.L. to her natural father is currently under submission before this panel (appeal No. 2005-CA-001276-ME). That appeal has been placed in abeyance pending resolution of this criminal appeal, as the two cases appear to be inextricably entwined.

<sup>4</sup> Attorney Jamieson also represented H.L. in the custody case.

Castile opted not to enter into a plea, and a new trial date was set for March 16, 2005.

The morning before trial, the circuit court conducted an extensive hearing on several pending motions in limine. After receiving an unfavorable ruling regarding the testimony of a defense expert, Castile's counsel recommended that plea negotiations should resume. Following a lunch break, attorney Roark discussed the matter with Castile and with the Assistant Commonwealth's Attorney, and Castile then requested input from attorney Jamieson, who at that time was obtaining avowal testimony from the defense expert witness. Shortly before 4:00 that afternoon, an agreement was reached, and Castile moved to enter a guilty plea to an amended charge of Third Degree Sexual Abuse, with a recommended sentence of thirty days in jail, to be served on weekends, that he have no contact with the victim, and that he must register as a sex offender. The circuit court conducted a Boykin<sup>5</sup> colloquy, during which Castile admitted to having committed the offense, and the plea was accepted. An Order and Judgment memorializing the guilty plea was entered March 16, 2005, which scheduled a sentencing hearing for May.

On April 13, 2005, the Livingston Circuit Court entered its ruling in the custody case, having reserved its ruling until Castile's criminal case had been decided. The

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<sup>5</sup> Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

court found that a change in circumstances had taken place, in that H.L. had married and continued to have a relationship with Castile, who had sexually abused A.L. The court then awarded sole custody to A.L.'s natural father, and H.L. was only granted supervised visitation.

Back in the criminal case, attorney Roark moved to withdraw as counsel on May 12, 2005, the day before the sentencing hearing, which was granted the following day when attorney Lisa DeRenard entered an appearance. Through new counsel, Castile moved the circuit court to withdraw his guilty plea and set aside the order and judgment. He argued that the plea was entered based upon his former attorney's representation that he would have to register as a sex offender for five years rather than ten, and that he had less than ten minutes to discuss and accept the plea agreement. Accordingly, he asserted that his plea was involuntary. He requested a hearing on the motion, which was held that day.

During the hearing, Castile introduced testimony from his former counsel. Attorney Roark testified that the settlement discussions lasted several hours, beginning shortly after lunch and culminating with the entry of the plea around 4:00. While she testified that she never told Castile that he had ten minutes to make a decision, she stated that she might have told him that the judge needed to go home and that he

needed to decide that afternoon as the trial was scheduled for the next morning. However, the offer was discussed for more than ten minutes. Regarding the period of time he would have to register as a sex offender, attorney Roark testified that she mistakenly told Castile that he would only have to register for five years. However, she produced a letter from her to Castile dated September 2, 2004, in which she addressed the registration requirement, informing him that he would "merely have to give your address and phone number of where you are living for the next ten years to the State Police and will be in their sexual offender database during that period." (Emphasis added.) On the evening of March 15<sup>th</sup>, she determined that the period of registration was ten years, and contacted Castile by cell phone the next day. Castile indicated that he already knew that he had to register for ten years. She mailed a letter to Castile on March 21<sup>st</sup> discussing the registration period in Kentucky and whether he would have to register in Tennessee, where he was a resident.

Castile testified next. He stated that he did not remember the contents of the September 2004 letter, with everything going on during the plea discussions, and he clarified that he was given ten minutes to make a decision toward the end of the negotiations. He testified that he would not have taken the plea if he had known he would have to

register for ten years in Kentucky. On cross-examination, he admitted that H.L. stayed with him every so often at his residence in Tennessee until the custody hearing neared, when they were told they should not be seen together. At that point, H.L. moved in with her grandmother. He also agreed that he was an intelligent person, and did not have any mental deficiencies. The Commonwealth also presented the circuit court with a copy of the recently entered order from the custody case awarding sole custody of A.L. to her natural father.

At the conclusion of the testimony, the circuit court allowed the parties to argue their respective sides through counsel. Castile stated that he had been given erroneous information by his attorney and felt pressured by time limitations to decide whether to accept the plea agreement. The Commonwealth, on the other hand, maintained that the only reason Castile was attempting to withdraw his guilty plea was due to the adverse custody ruling, in which H.L. lost custody of her daughter. Regarding the named reasons, the Commonwealth pointed out that Castile failed to establish that he had been pressured to do anything, but merely testified that his time had been limited, and that Castile knew that he had to register as a sex offender for ten years at the time he entered the plea based upon his attorney's letter and telephone conversation shortly after the plea was entered. Furthermore, it took two months for

Castile raise any concerns over the length of the sex offender registration period.

The circuit court made several findings on the record before denying Castile's motion. Specifically, the circuit court found that any uncertainty as to the period of registration would not render an otherwise knowing, intelligent, and voluntary plea invalid, and that the real reason behind the motion was the loss of custody by H.L. The circuit court went on to sentence Castile pursuant to the Commonwealth's recommendation and the final judgment and sentence, along with the order denying the motion to withdraw the guilty plea, was entered May 18, 2005. This appeal followed.

Castile raises two issues on appeal, namely, whether the trial court erred in denying his motion to withdraw the guilty plea and whether the custody ruling was relevant in determining whether his guilty plea was valid. The Commonwealth responds to each of these arguments in its brief, asserting that the circuit court did not commit any error or abuse its discretion.

Our standard of review in the matter is two-fold. First, we must determine whether the circuit court's determination that Castile's plea was voluntary is supported by the record under a clearly erroneous standard. In Lynch v.

Commonwealth,<sup>6</sup> this Court held that it "is not to act de novo in determining the question of voluntariness. Rather it is to review the record before it to ascertain whether the court below acted erroneously in denying that appellant's pleas were made involuntarily." More recently, the Supreme Court of Kentucky in Rodriguez v. Commonwealth stated, "[o]ur case law is clear that the discretion to deny a motion to withdraw a guilty plea exists only after a determination has been made that the plea was *voluntary*. If the plea was *involuntary*, the motion to withdraw must be granted."<sup>7</sup> Second, if the plea was voluntary, we must determine whether the circuit court abused its discretion in denying Castile's motion to withdraw his guilty plea.<sup>8</sup>

We shall first address Castile's second argument regarding the circuit court's review of the custody order concerning H.L.'s daughter. Castile argues that the order was not relevant under KRE 401 to the determination as to whether his attorney provided him with incorrect information or whether his plea was knowing, intelligent and voluntary. The Commonwealth contends that the information in the custody order was in fact relevant, as it went to Castile's and H.L.'s

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<sup>6</sup> 610 S.W.2d 902, 905 (Ky.App. 1980).

<sup>7</sup> 87 S.W.3d 8, 10 (Ky. 2002).

<sup>8</sup> Anderson v. Commonwealth, 507 S.W.2d 187, 188 (Ky. 1974); Hurt v. Commonwealth, 333 S.W.2d 951, 953 (Ky. 1960).



credibility as well as to his motive for wanting to withdraw his plea.

KRE 401 defines "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." We agree with the Commonwealth that the custody order was relevant, in particular to the motive behind the motion to withdraw the guilty plea. The circuit court did not abuse its discretion in considering the custody order.

We shall next address the heart of this case, which is whether the circuit court properly denied Castile's motion to withdraw his guilty plea. He claims that his plea was invalid based upon a totality of the circumstances, including that his attorney provided incorrect information about the reporting requirement and that he was only given a brief time to decide whether to enter a plea. The Commonwealth counters with the argument that Castile had been thoroughly apprised of his rights and that he did not satisfy the high burden of proving that his plea was not entered knowingly, intelligently or voluntarily.

RCr 8.08 provides that "[a] defendant may plead not guilty, guilty or guilty but mentally ill. The court may refuse to accept a plea of guilty or guilty but mentally ill, and shall not accept the plea without first determining that the plea is

made voluntarily with understanding of the nature of the charge." Pursuant to RCr 8.10, "[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 Bronk v. Commonwealth,<sup>9</sup> the Supreme Court of Kentucky addressed the validity of a guilty plea:

A guilty plea is valid only when it is entered intelligently and voluntarily.[] Thus, RCr 8.08 requires a trial court, at the time of the guilty plea, to determine "that the plea is made voluntarily with understanding of the nature of the charge," [] to fulfill "the dual purpose of having a judicial determination that the guilty plea is made voluntarily and understandably and providing an appropriate court record demonstrating those important facts."[] Under RCr 8.10, trial courts have discretion to permit a defendant to withdraw his or her guilty plea before final judgment and proceed to trial.[] In cases where the defendant disputes his or her voluntariness, a proper exercise of this discretion requires trial courts to consider the totality of the circumstances surrounding the guilty plea[] and juxtapose the presumption of voluntariness inherent in a proper plea colloquy with a Strickland v. Washington[], 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984),] inquiry into the performance of counsel:

A showing that counsel's assistance was ineffective in enabling a defendant to intelligently weigh his legal alternatives in deciding to plead guilty has two components: (1) that counsel made errors so serious that counsel's performance fell outside the

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<sup>9</sup> 58 S.W.3d 482, 486-87 (Ky. 2001). (Footnotes omitted.)

wide range of professionally competent assistance; and (2) that the deficient performance so seriously affected the outcome of the plea process that, but for the errors of counsel, there is a reasonable probability that the defendant would not have pleaded guilty, but would have insisted on going to trial.[]

Regarding the totality of the circumstances surrounding the plea, a trial court must consider "the accused's demeanor, background and experience, and whether the record reveals that the plea was voluntarily made. . . . The trial court is in the best position to determine if there was any reluctance, misunderstanding, involuntariness, or incompetence to plead guilty."<sup>10</sup>

In the present case, there is an abundance of evidence to support the circuit court's finding that Castile's plea was a valid one. He is an intelligent person who understood the charge against him and the ramifications of entering the plea, and his expressed reasons supporting his claim of involuntariness were called into question by his own former attorney. Regardless of what his attorney told him at the time of the plea regarding the registration period, Castile had previously received the correct information and indicated to his attorney that he knew that the registration period was for ten years in Kentucky. Furthermore, he never testified that he felt

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<sup>10</sup> Centers v. Commonwealth, 799 S.W.2d 51, 54 (Ky.App. 1990).

any pressure to make his decision, and the record shows that he had several hours to make his decision. Therefore, the circuit court did not commit any error in finding that Castile's plea was entered voluntarily, intelligently, and knowingly.

We also agree with the Commonwealth that the circuit court did not abuse its discretion in denying Castile's motion, once it determined that the plea was valid. It was appropriate for the circuit court to consider that the actual motive behind the motion was H.L.'s loss of custody of her daughter, and was in essence an attempt to reopen this case to allow her to regain custody. Based upon the totality of the circumstances surrounding the plea, we perceive no abuse of discretion in the circuit court's ruling.

For the foregoing reasons, the judgment of the McCracken Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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