

RENDERED: SEPTEMBER 26, 2008; 2:00 P.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2007-CA-001842-MR

ANDREW HERMAN RAMOS

APPELLANT

v. APPEAL FROM CARROLL CIRCUIT COURT  
HONORABLE STEPHEN L. BATES, JUDGE  
ACTION NO. 07-CR-00046

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \* \* \* \*

BEFORE: VANMETER AND WINE, JUDGES; LAMBERT,<sup>1</sup> SENIOR JUDGE.

LAMBERT, SENIOR JUDGE: Appellant contends that his guilty plea was coerced and that the trial court should have allowed him to withdraw it. From the trial court's adverse order, Appellant appeals to this court.

---

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

The charges against Appellant originated from a police officer's "knock and talk" at the residence of Appellant's co-defendant, Paula Smith. Smith invited the officer inside at which time he witnessed Appellant toss an amber, cylindrical object into the closet. The object was a medication bottle which contained three bags of white powder. Testing confirmed that the substance was cocaine.

Smith told the officer that Appellant was her sister's boyfriend and that the purpose of his visit was to sell her some marijuana he had purchased in Detroit. Stating that she had paid Appellant \$100.00 for it, Smith then turned over some marijuana to the officer and informed him that Appellant was in possession of cocaine. It turns out that the only cocaine retrieved was contained in the medicine bottle that the officer had seen Appellant throw in the closet. Appellant denied that he had possessed or thrown the medicine bottle, although he admitted that he had ingested cocaine within the past two days and he refused to take a drug test.

Smith and Appellant were arrested and a subsequent search of Appellant's car revealed Detroit receipts which tended to corroborate Smith's statement. Appellant was indicted for possession of a controlled substance in the first degree, trafficking in a controlled substance near a school, possession of drug paraphernalia and for being a persistent felony offender in the second degree.

Counsel was appointed for Appellant and he entered an initial plea of not guilty. He later changed his plea to guilty. Before accepting Appellant's guilty

plea, the trial court properly observed the procedures required by *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969), and determined that Appellant's guilty plea was voluntary and intelligent.

However, on the day Appellant was to be sentenced, he sought to withdraw his guilty plea. RCr 8.10 provides that the court may permit a guilty plea to be withdrawn at any time before judgment. Whether to permit withdrawal of a plea is a decision subject to the sound discretion of the trial court. Despite such discretion, a hearing is mandatory upon a claim that the original plea was not voluntary. *Edmonds v. Commonwealth*, 189 S.W.3d 558 (Ky. 2006); *Rodriguez v. Commonwealth*, 87 S.W.3d 8 (Ky. 2002).

The trial court appropriately granted Appellant a hearing. In fact, when Appellant started arguing the facts of his underlying case during the hearing, the court explained that the purpose of the hearing was to determine the voluntariness of Appellant's prior guilty plea. Consequently, the court directed Appellant to focus on his plea colloquy and specify any part of it that was false. The trial court then postponed the hearing to allow Appellant to review the colloquy. Additionally, as Appellant still had the same counsel who assisted him when he pled guilty, counsel and the court agreed that conflict counsel should be appointed to assist in the hearing to withdraw the plea.

On the date of the withdrawal hearing, Appellant appeared with conflict counsel. First, counsel asked Appellant if, at the time he pled guilty, he had admitted guilt, admitted satisfaction with his attorney and with the

investigation of his case. Upon an affirmative answer, counsel asked Appellant to explain why his reasoning had changed since that time. He responded:

Well, I was under a lot of pressure from several instances in my case that I wanted to be addressed that were never addressed. And, I felt pressured into – since it wasn't addressed, I felt kind of trapped and pressed into just going along with it.

Further, in response to leading questions, Appellant agreed that that he felt he had no alternative at the time because his concerns were not being addressed and that his plea was made involuntarily. Appellant's issues and concerns were not more specifically identified. This was the extent of Appellant's testimony at the hearing.

The only specific allegation of inadequate investigation was made during argument at the conclusion of the testimony. Counsel explained that the medicine bottle containing the cocaine had been sent away for fingerprint testing, but the results had not come back. This fact was not even mentioned by Appellant in his testimony.

Whether a plea is found to be voluntarily entered, considering the totality of the circumstances is a fact-sensitive inquiry, rendering our standard of review deferential and requiring evidence of clear error. *Edmonds*, 189 S.W.3d 558. This record reveals substantial evidence supporting the trial court's decision. Appellant's testimony at the post-plea hearing fell far short of undermining any part of the thorough *Boykin* colloquy the court had engaged him in prior to

accepting the guilty plea. Accordingly, the trial court committed no abuse of discretion in rejecting Appellant's motion to withdraw the plea.

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

ALL CONCUR.

BRIEFS FOR APPELLANT:

Kathleen Kallaher Schmidt  
Assistant Public Advocate  
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Jack Conway  
Attorney General of Kentucky

Michael L. Harned  
Assistant Attorney General  
Frankfort, Kentucky