

RENDERED: DECEMBER 14, 2012; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-001292-MR
AND
NO. 2011-CA-001293-MR

JAYSON P. WORKMAN

APPELLANT

v. APPEALS FROM CALLOWAY CIRCUIT COURT
HONORABLE DENNIS R. FOUST, JUDGE
ACTION NOS. 10-CR-00001 AND 10-CR-00008

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION REMANDING

** ** * ** * ** *

BEFORE: ACREE, CHIEF JUDGE; NICKELL AND STUMBO, JUDGES.

ACREE, CHIEF JUDGE: The issue on appeal is whether the Calloway Circuit Court erroneously denied Appellant Jayson Workman's request to withdraw, at sentencing, two previously entered guilty pleas. For the following reasons, we remand for additional proceedings consistent with this opinion.

On January 5, 2010, the Calloway County Grand Jury indicted Workman on one count of murder in violation of Kentucky Revised Statute (KRS) 507.020. The charge stemmed from an allegation that Workman stabbed a man multiple times with a knife. Thereafter, by Information pursuant to Kentucky Rules of Criminal Procedure (RCr) 6.02, the Commonwealth charged Workman with one count of flagrant non-support in violation of KRS 530.050 because Workman allegedly failed to pay court-ordered child support resulting in an arrearage totaling \$6,206.21. Workman initially entered not guilty pleas to both charges.

The murder case was set to be tried before a jury on June 7, 2011. On June 2, 2011, the Commonwealth tendered an offer to resolve both matters. In exchange for Workman's pleas of guilty, the Commonwealth agreed to reduce the murder charge to first-degree manslaughter. Workman accepted the Commonwealth's offer.

On June 3, 2011, Workman appeared before the circuit court, with counsel, and pleaded guilty to the flagrant non-support charge and entered an *Alford*¹ plea to the manslaughter charge. Prior to accepting Workman's pleas, the circuit court held a lengthy colloquy with both Workman and his attorney pursuant to *Boykin v. Alabama*.² Ultimately, the circuit court concluded Workman's pleas were made knowingly, voluntarily, and intelligently, and accepted them. Final sentencing was scheduled for June 17, 2011.

¹ So named for *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970).

² 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

At the hearing, Workman's attorney sought to postpone sentencing and orally requested that Workman be permitted to withdraw his guilty pleas.³ In support of his motion, Workman argued: (i) during the plea colloquy, the circuit court did not ask whether he could live with his decision to plead guilty; (ii) he was not afforded adequate time to consider the Commonwealth's offers and felt rushed into making a decision; (iii) he did not perceive he could receive a fair trial in Calloway County; and (iv) his family had received several threats as a result of his decision to accept the Commonwealth's plea agreements. The Commonwealth vehemently opposed Workman's motion, asserting none of the grounds raised by him were sufficient to set aside the guilty pleas.

A separate evidentiary hearing was neither requested nor held. Instead, following counsels' arguments on the issue, the circuit court denied Workman's motion. In so doing, the circuit court acknowledged, in light of the June 7, 2011 trial date, it had set a June 3, 2011 deadline for the parties to reach a plea agreement. Despite the deadline, the circuit court reminded Workman it had held a comprehensive plea colloquy with him on June 3, 2011, and ultimately found that his pleas were voluntarily, knowingly, and intelligently entered. The circuit court also emphasized that the concerns now raised by Workman could, and should, have been addressed during the June 3rd hearing if they had, in fact, existed. The circuit court concluded Workman's motion lacked merit.

³ Counsel also expressed her intention to file a written motion seeking permission for Workman to withdraw his pleas.

The circuit court then sentenced Workman, pursuant to the plea agreements, to seventeen years imprisonment on the manslaughter conviction, and three years imprisonment on the flagrant non-support conviction, to be served consecutively for a total of twenty years. Workman timely appealed. On October 17, 2011, this Court ordered the two appeals consolidated.

RCr 8.10 provides, in pertinent part: “[a]t any time before judgment the court may permit the plea of guilty . . . to be withdrawn and a plea of not guilty substituted.” Of course, a guilty plea is valid only if it was “entered intelligently and voluntarily.” *Bronk v. Commonwealth*, 58 S.W.3d 482, 486 (Ky. 2001). Accordingly, the first step in deciding whether to grant or deny a motion to withdraw a guilty plea requires “a factual inquiry into the circumstances surrounding the plea, primarily to ascertain whether it was voluntarily entered.” *Rigdon v. Commonwealth*, 144 S.W.3d 283, 288 (Ky. App. 2004) (quoting *Bronx*, 58 S.W.3d at 489 (Cooper, J., concurring)). In assessing the voluntariness of the plea, the circuit court must consider the totality of the circumstances. *Rodriguez v. Commonwealth*, 87 S.W.3d 8, 10 (Ky. 2002); *Rigdon*, 144 S.W.3d at 290 (explaining the circuit court must look “beyond the plea colloquy to determine whether [the defendant’s] plea was voluntarily entered under the totality of the circumstances surrounding his plea”).

If the circuit court concludes the plea was entered involuntary, the motion to withdraw must be granted. *Rodriguez*, 87 S.W.3d at 10; *Edmonds v. Commonwealth*, 189 S.W.3d 558, 566 (Ky. 2006) (“If a guilty plea is found to

have been entered involuntarily, considering the totality of the circumstances, a trial court must grant a defendant's motion to withdraw the plea.” “The trial court’s determination on whether the plea was voluntarily entered is reviewed under the clearly erroneous standard.” *Rigdon*, 144 S.W.3d at 288. A decision not supported by substantial evidence is clearly erroneous. *Id.*

If the circuit court concludes the plea was entered voluntarily, it may, “within its discretion, either grant or deny the motion.” *Williams v. Commonwealth*, 229 S.W.3d 49, 51 (Ky. 2007). “This decision is reviewed under the abuse of discretion standard.” *Rigdon*, 144 S.W.3d at 288. An abuse of discretion occurs when the trial court’s decision is “arbitrary, unreasonable, unfair, or unsupported by legal principles.” *Id.*

Workman contends the circuit court’s conclusion that his plea was entered voluntarily was clearly erroneous. Workman argues the circuit court could not have adequately considered whether Workman voluntarily entered his pleas because the circuit court declined to hold an evidentiary hearing on Workman’s motion to withdraw. Concomitantly, despite the seemingly irrefutable plea colloquy, Workman maintains that, without affording him an opportunity at an evidentiary hearing to personally explain why he felt pressured and coerced into pleading guilty, the circuit court undoubtedly could not have appraised “the totality of the circumstances surrounding his plea.” *Rigdon*, 144 S.W.3d at 290.

In response, the Commonwealth asserts the record conclusively establishes Workman’s plea was entered voluntarily. The Commonwealth points to

Workman's plea colloquy, during which Workman related he had read the plea offers and guilty plea documents, admitted he understood his legal situation, acknowledged he was represented by competent counsel, and affirmed he was not coerced, threatened or forced into giving his plea, he was not under the influence of drugs or alcohol, he lacked any mental defect affecting his ability to think or reason, and he was entering the pleas under his own free will because he believed it was in his best interest to do so.

Our Supreme Court has decisively resolved this issue, explaining “though an RCr 8.10 motion is generally within the sound discretion of the trial court, a defendant is entitled to a hearing on [a motion to withdraw a guilty plea] whenever it is alleged that the plea was entered involuntarily.” *Edmonds*, 189 S.W.3d at 566; *Williams*, 229 S.W.3d at 51 (“[W]here it is alleged that the plea was entered involuntarily the defendant is entitled to a hearing on the motion.”). Here, Workman's argument before the circuit court prior to sentencing arguably encompassed allegations that his guilty plea was not entered voluntarily. As a result, the circuit court was obligated to hold an evidentiary hearing so that Workman could fully explain, in his own words, his grounds for wanting to withdraw his guilty pleas before ruling on his motion. *Rodriguez*, 87 S.W.3d at 11 (“[T]he word “may” in RCr 8.10 does not give a trial judge unfettered discretion to deny a motion to withdraw a guilty plea without affording the defendant a[n evidentiary] hearing on the motion.”). Accordingly, we remand this matter with instructions to hold an evidentiary hearing on Workman's motion to withdraw his

guilty pleas and to make a subsequent determination, under the totality of the circumstances, including the circumstances raised by Workman in his motion, whether Workman voluntarily entered his pleas. If the circuit court concludes Workman voluntarily entered his pleas, it is then within the circuit court's sound discretion to grant or deny Workman's motion. In reaching this decision, we express no opinion as to the merits of Workman's motion.

For the foregoing reasons, we remand the Calloway Circuit Court's June 17, 2011 Judgments and Sentences on Pleas of Guilty for additional proceedings consistent with this opinion.

ALL CONCUR.

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