

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

NO. 2016-CA-001709-MR

KASEY KAZEE

APPELLANT

v. APPEAL FROM BOYD CIRCUIT COURT  
HONORABLE C. DAVID HAGERMAN, JUDGE  
ACTION NO. 14-CR-00424-001

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, JOHNSON AND J. LAMBERT, JUDGES.

COMBS, JUDGE: Appellant, Kasey Kazee (Kazee), appeals from an Order of the Boyd Circuit Court denying his motion to withdraw his guilty plea and to vacate judgment. After our review, we affirm.

On October 24, 2014, Kazee signed a criminal information charging him with Robbery, First Degree. He was subsequently charged with being a first-

degree Persistent Felony Offender (PFO). On April 17, 2015, he pled guilty to first-degree robbery and received a 12-year sentence in exchange for dismissal of the PFO charge. On May 8, 2015, the trial court entered Final Judgment and Sentence of Incarceration.

On September 2, 2015, Kazee filed a motion to withdraw and set aside his guilty plea on the ground that it was not knowing and voluntary because it “was made without knowledge that the First Degree Robbery charges against Kazee’s co-defendant, Jeffrey Driver, were dismissed in exchange for Driver’s testimony against Kazee.” Kazee claimed that he did not become aware of that fact until immediately prior to his plea -- when he also learned “that the victim, Marcus Woodward, was ... going to exonerate Driver and testify against Kazee” contrary to Woodward’s prior statements. Kazee argued that he would have insisted on going to trial had he been aware of this information with sufficient time for reflection prior to entering his plea.

In its response, the Commonwealth contended that Kazee was provided with “complete discovery” and all other information that he requested; that the police reports, discovery, and supplements “clearly indicate that the officer’s initial recitation ... [was] clarified the day after the attack when Mr. Woodward implicated ... Kazee....” The Commonwealth also claimed that Kazee’s counsel had been provided with Mr. Driver’s statement and was aware that the Commonwealth intended to call him as a witness.

The matter was heard on February 25, 2016. By Order entered on October 25, 2016, the trial court denied Kazez's motion to withdraw the plea and to vacate judgment "because the evidence presented does not support the Defendant's claim and in fact totally refutes it." The trial court summarized the testimony presented at hearing, including that of Ashland Police Detective Richard Bohannon. Detective Bohannon interviewed Mr. Driver twice while he was in jail. The first interview was memorialized in a report and the second was recorded. Copies of both were provided to Kazez well before trial. Detective Bohannon testified he never promised Driver anything other than that he would advise the prosecutor of his cooperation.

The court determined that Kazez was aware of the contents of Driver's prior statements well before he (Kazez) entered his guilty plea. He also knew that the victim was going to implicate him at trial before entering his guilty plea. Kazez told the court he was pleading guilty of his own free will and had had all the time he wished to confer with his attorney. Kazez then proceeded to advise the court under oath that he had committed the offense of first-degree robbery. The court concluded that nothing in the record supported Kazez's motion to withdraw his plea and that it was that clear that he accepted the Commonwealth's offer of twelve years "voluntarily and knowingly and in so doing managed to avoid the possibility of a lengthy prison term ...."

On November 14, 2016, Kazez filed his Notice of Appeal to this Court. In his Statement of the Case, Kazez explains that his motion to withdraw

his guilty plea “was essentially a CR<sup>1</sup> 60.02 motion to set aside the judgment of guilt based on an unknowing and involuntary plea.” In his Argument, Kazeo also refers to RCr<sup>2</sup> 8.10, which provides in relevant part that “[a]t any time before judgment the court may permit the plea of guilty ... to be withdrawn and a plea of not guilty substituted.” However, Kazeo moved to withdraw his plea **after** judgment and sentencing. After sentencing, a trial court should not allow a plea to be withdrawn “unless it appears that the accused's consent to plead guilty was unwillingly given and made under circumstances of fear, deceit, or coercion.” *Blair v. Commonwealth*, 479 S.W.2d 643, 644 (Ky. 1972) (citations and internal quotation marks omitted).

We review the denial of a CR 60.02 motion for an abuse of discretion. The test for abuse of discretion is whether the trial court's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles. Absent a flagrant miscarriage of justice, we will affirm the trial court.

*Diaz v. Commonwealth*, 479 S.W.3d 90, 92 (Ky. App. 2015) (internal quotation marks and citations omitted).

Kazeo essentially re-argues his case on appeal. He contends that he did not learn of Driver's agreement to testify against him until the day that he (Kazeo) entered his plea and that he had no time to consider or to reflect on it.

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<sup>1</sup> Kentucky Rules of Civil Procedure.

<sup>2</sup> Kentucky Rules of Criminal Procedure.

Kazee also contends that when he entered his plea, he did not have the benefit of Driver's statement or synopsis of Driver's testimony that would be used against him in the event of a trial.

We have reviewed the record of the proceedings. Kazee acknowledged at hearing that he went over the evidence before entering his plea -- police reports and tapes of interviews. Moreover, the discovery provided to Kazee a year and one-half preceding the plea included the substance of what Driver's testimony was going to be.<sup>3</sup> As the trial court observed, Kazee knew before he pled guilty that Driver was going to be a witness against him if he (Kazee) went to trial. In fact, the court allowed Kazee and his counsel to take a break before he entered his plea. They went off and (presumably) discussed it. We agree with the trial court that the evidence presented does not support Kazee's claim "and in fact totally refutes it." We find no abuse of discretion.

We affirm the October 25, 2016, Order of the Boyd Circuit Court.

ALL CONCUR.

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<sup>3</sup> By agreement of the parties, the court took judicial notice of the discovery at hearing.

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