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Commonwealth of Kentucky

Court of Appeals

NO. 2019-CA-000340-MR

SPENCER HEATON — APPELLANT

v.

APPEAL FROM CALDWELL CIRCUIT COURT
HONORABLE C.A. WOODALL, JUDGE
ACTION NO. 17-CR-00017

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: JONES, KRAMER AND TAYLOR, JUDGES.

KRAMER, JUDGE: Spencer Heaton was arrested and charged with first-degree robbery on December 17, 2016, and a Caldwell Circuit Court grand jury later indicted him for that offense on February 7, 2017. On March 22, 2018, the date his criminal trial was set to begin, Heaton offered a guilty plea. Consistent with his plea agreement, the circuit court consequently sentenced him to ten years'

imprisonment. He now appeals, arguing the circuit court erred when it found him competent to enter a guilty plea. Upon review, we affirm.

The relevant facts and procedural history are as follows. Prior to accepting his plea on March 22, 2018, the circuit court conducted what Heaton concedes was a satisfactory *Boykin*[1] colloquy. After Heaton announced his intent to accept a plea deal from the Commonwealth, the circuit court explained to him the nature of his charge and the consequences of his guilty plea, including the constitutional rights he was waiving. In response to questioning by the circuit court, Heaton also affirmed the following under oath: He had legal counsel who reviewed the written offer of plea agreement with him and explained his rights and the consequences of the plea; he could read and write; he was satisfied with the advice of his legal counsel; he was not under the influence of any drugs or alcohol; he understood what he was doing in entering the plea; and he was entering the plea voluntarily.

Likewise, Heaton's counsel affirmed under oath during the colloquy that he and Heaton had been provided sufficient time to discuss the case; he and Heaton had conducted "quite a bit of trial preparation" over the course of the approximate year since Heaton's indictment; in his opinion, Heaton understood "what we're doing here today and understands his constitutional rights, as well as

[1] *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

the collateral, negative consequences that go along with having a felony on his record"; that Heaton's guilty plea was consistent with his advice; and that in his opinion, Heaton's plea was "made knowingly, intelligently, and voluntarily."

Afterward, the circuit court determined Heaton had made a knowing, intelligent, and voluntary guilty plea, and accepted it. The circuit court entered an order to that effect on March 22, 2018, and scheduled Heaton's final sentencing hearing for May 1, 2018.

However, on April 27, 2018, Heaton filed an RCr[2] 8.10 motion to withdraw his guilty plea, claiming it had been involuntary and therefore invalid. In the relevant part of his motion, Heaton asserted (by and through the same counsel who had appeared with him during the colloquy) as follows:

> In this instant action, shortly after entering the plea, defendant Heaton advised counsel that he truly did not understand what had occurred. Counsel immediately contacted a psychiatrist to have defendant Heaton evaluated. That was Dr. Robert Granacher, who evaluated Spencer Heaton on April 11, 2018. That examination lasted approximately six hours and included both [an] in-person interview as well as significant testing.
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> . . . .
>
> As can be seen from the report of Dr. Granacher, there are many factors that support this motion to withdraw plea. One of which is the fact that at the time of entering the plea, defendant Heaton was taking four medications,

[2] Kentucky Rule of Criminal Procedure.

> none of which he informed the Court of in his proffer of his plea.[3]
>
> . . . .
>
> Dr. Granacher has determined that the defendant has a very limited education. That limited education makes it difficult, if not impossible, for Spencer to have read and understood the plea agreement.
>
> Dr. Granacher concludes that within a reasonable degree of medical probability, Spencer Heaton "… lacks general competency and lack [sic] competency to plead guilty to his current charges before the Commonwealth of Kentucky (Granacher report, p. 13)."

The Commonwealth subsequently opposed Heaton's claim that his guilty plea was invalid due to mental incapacity and therefore involuntary. Nevertheless, the circuit court ordered Heaton to undergo a competency evaluation at the Kentucky Correctional Psychiatric Center (KCPC), and thereafter held an evidentiary hearing relative to Heaton's motion on November 9, 2018.

At the evidentiary hearing, only two witnesses testified. The first was Dr. Granacher, who provided an expert opinion consistent with his report. The second was Dr. Steven Sparks, a forensic psychologist who evaluated Heaton

[3] This April 27, 2018 motion was the first and last instance where Heaton insinuated his guilty plea was involuntary due to the influence of medication he may have taken around the time of his colloquy. In his subsequent pleadings, Heaton's focus shifted entirely to the proposition that his plea was invalid because he suffered from an intellectual disability; the testimony he elicited from Dr. Granacher only concerned the extent of his purported intellectual disability; and the premise of his appeal is that his guilty plea was invalid because he suffers from a lifelong intellectual disability.

while Heaton was at KCPC. In a well-reasoned order resolving Heaton's claim of mental incapacity, the circuit court summarized their testimony as follows:

> [Dr. Granacher] is certainly highly qualified but was hired by the defense at the end of the process. His findings have more to do with general competency than with competency in the courtroom setting. Dr. Granacher acknowledged that whether a defendant was legally competent to stand trial or enter a guilty plea was a legal decision for a court to make, but in his opinion, the Defendant did not have the intellectual capacity to understand what he was doing. In his opinion, Mr. Heaton was intellectually disabled and unable to make a knowing or intelligent guilty plea.
>
> Dr. Granacher acknowledged that his testing results were consistent with a lack of effort, but could have been because of the lack of capacity.
>
> Dr. Granacher also acknowledged that he did not ask Mr. Heaton any specific questions about this legal question or the court system or trials in particular.
>
> Dr. Steven Sparks is a forensic psychologist under contract with KCPC and his testing and opinions were more courtroom based and, in his opinion, Mr. Heaton did have the capacity to appreciate the nature and consequences of these proceedings and the capacity to participate personally in his own defense. Dr. Sparks did not believe that Mr. Heaton was intellectually disabled.

In short, the circuit court chose to credit the expert opinion of Dr. Sparks, rather than the expert opinion of Dr. Granacher.

Apart from that, the circuit court noted Heaton, who was at the time 31 years of age, was a high school graduate and had been working for his family's

business since his graduation. The circuit court also considered and found persuasive Heaton's March 22, 2018 colloquy – as well as what Heaton's own attorney had indicated about Heaton's mental capacity during the colloquy and prior thereto:

> The guilty plea colloquy video does show that the Court questioned, and the Defendant answered, for a little over seven minutes on March 22. The Court did not notice any reticence on Defendant's part in answering questions. He did look to his counsel occasionally and primarily when asked if he admitted his guilt. Mr. Heaton stated that he was "absolutely" satisfied with his counsel's performance.
>
> Counsel stated that he and Mr. Heaton had done quite a bit of trial preparation. Counsel also confirmed that he believed his client understood the consequences and that the plea was consistent with his advice and was made knowingly, intelligently, and voluntarily. Counsel had represented Defendant for approximately one year at this point. The Court found that the plea was in fact made knowingly, intelligently, and voluntarily, and accepted the guilty plea. Attorney Walter is known by the Court as a highly competent and well prepared practitioner and that is his reputation within the legal profession. There had been nothing to alert the Court to any potential mental health or intellectual disability issues. The defense had filed no notice as required by RCr 8.07 on any mental disease, mental defect, or other mental health condition bearing on the issue of guilt or punishment.

In light of the foregoing, the circuit court concluded once more that Heaton's guilty plea "had been made knowingly, intelligently, and voluntarily meeting the legal requirements[.]" The circuit court later sentenced Heaton,

consistently with his plea agreement with the Commonwealth, to ten years' imprisonment with eligibility for parole upon the completion of 85% of his term.

Now on appeal, Heaton asserts the circuit court erred in denying his motion to withdraw his guilty plea for two reasons.

First, he re-emphasizes that his expert, Dr. Granacher, examined him through a variety of testing methods and concluded that he lacked the intellectual capacity to enter a valid guilty plea. He also asserts that Dr. Granacher's testing methods were more effective in gauging his intellectual capacity than the testing methods utilized by Dr. Sparks.

Weighing the evidence, however, was the circuit court's prerogative; and the mere fact that the circuit court chose to credit one expert over another is not a basis for reversal. *See, e.g.*, *Alley v. Commonwealth*, 160 S.W.3d 736, 739 (Ky. 2005) ("The mere fact that the trial judge accepted the testimony of one of the doctors as more credible than the other, has been found to be permissible and allows the judge to make a finding regarding competency.").

Rather, the dispositive question is whether substantial evidence supported the circuit court's conclusion that Heaton's guilty plea was knowing, intelligent, and voluntary, considering the totality of the circumstances; we review the circuit court's determination in that respect under the standard of clear error. *See Edmonds v. Commonwealth*, 189 S.W.3d 558, 566 (Ky. 2006). In that vein,

two questions must be considered when ascertaining a defendant's competence to plead guilty:

> (1) whether the defendant is sufficiently coherent to provide his counsel with information necessary or relevant to constructing a defense; and
>
> (2) whether he is able to comprehend the significance of the trial and his relation to it. The defendant must have an ability to confer intelligently, to testify coherently, and to follow the evidence presented. It is necessary that the defendant have a rational as well as a factual understanding of the proceedings.

Bishop v. Caudill, 118 S.W.3d 159, 163 (Ky. 2003)[4] (internal quotation marks and citation omitted).

Here, Dr. Sparks answered both of these inquiries in the affirmative with regard to Heaton's intellectual capacity and relevant mental state, and he testified extensively regarding his methodologies during Heaton's competency hearing. Heaton has never contended that Dr. Sparks was unqualified to testify as an expert in this matter; he does not cite any authority demonstrating Dr. Sparks' methodology and assessment of his intellectual capacity was flawed; nor does he argue that Dr. Sparks' opinion as to his intellectual capacity to plead guilty should

[4] *Bishop* specifically addressed the inquiry for assessing a defendant's competence to stand trial. But, the inquiry for assessing a defendant's competence to plead guilty is identical. *See Smith v. Commonwealth*, 244 S.W.3d 757, 760 (Ky. App. 2008).

have been excluded for any reason, or otherwise failed to qualify as substantial evidence.

Moreover, Heaton fails to address the additional evidence relied upon by the circuit court; namely its observations and impressions of his demeanor during his colloquy, and his declarations – and the declarations of his own counsel – about his capacity at that time. *See Blackledge v. Allison*, 431 U.S. 63, 74, 97 S.Ct. 1621, 1629, 52 L.Ed.2d 136 (1977) ("Solemn declarations in open court carry a strong presumption of verity."). Indeed, the circuit court particularly noted that Heaton's counsel had never given any indication – during the *year* of his representation preceding the colloquy – that any concerns existed regarding Heaton's intellectual capacity or mental state.

Thus, when the circuit court determined Heaton's guilty plea was knowing, intelligent, and voluntary, its ruling was not manifestly against the weight of the evidence. *See Frances v. Frances*, 266 S.W.3d 754, 756 (Ky. 2008) (citation omitted) ("[F]indings of fact are clearly erroneous only if they are manifestly against the weight of the evidence.").

As to the second reason Heaton believes the circuit court erred in denying his motion to withdraw his guilty plea, he asserts it was not enough for the circuit court to dispose of it by stating that his guilty plea was knowing, intelligent, and voluntary. Rather, he insists the circuit court should have made additional

findings addressing the non-exclusive factors for determining when a defendant *may* withdraw a guilty plea under Federal Rules of Criminal Procedure (FRCRP) 11(d)(2)(B).[5] As stated in *United States v. Hockenberry*, 730 F.3d 645, 662 (6th Cir. 2013), those factors are as follows:

> (1) the amount of time that elapsed between the plea and the motion to withdraw it; (2) the presence (or absence) of a valid reason for the failure to move for withdrawal earlier in the proceedings; (3) whether the defendant has asserted or maintained his innocence; (4) the circumstances underlying the entry of the guilty plea; (5) the defendant's nature and background; (6) the degree to which the defendant has had prior experience with the criminal justice system; and (7) potential prejudice to the government if the motion to withdraw is granted.

(Quotation omitted.)

With that said, Heaton is incorrect. To begin, our Supreme Court has expressly declined to impose specific criteria for lower courts to use in assessing motions to permissively withdraw guilty pleas. *See Williams v. Commonwealth*, 229 S.W.3d 49, 53 (Ky. 2007); *see also Thomas v. Commonwealth*, No. 2016-SC-000593-MR, 2017 WL 5023098, at *2 (Ky. Nov. 2, 2017) (unpublished)[6] ("Although the *Hockenberry* factors may touch on considerations relevant to

[5] FRCRP 11(d)(2)(B) provides: "A defendant may withdraw a plea of guilty . . . after the court accepts the plea, but before it imposes sentence if: . . . the defendant can show a fair and just reason for requesting the withdrawal."

[6] Cited as persuasive authority only pursuant to Kentucky Rule of Civil Procedure (CR) 76.28(4)(c).

determining whether a waiver of a constitutional right is valid, we decline to alter our existing precedent for determining whether the trial court erred when denying a motion to withdraw from an agreement in which a defendant waived a constitutional right.").

More to the point, it appears Heaton cited the *Hockenberry* factors because he failed to appreciate the difference between the *mandatory* withdrawal of an involuntary guilty plea and the *permissive* withdrawal of a voluntary guilty plea. The *Hockenberry* factors relate to a trial court's discretion to allow the permissive withdrawal of a guilty plea that *was* voluntarily and intelligently entered. Accordingly, they were never relevant to Heaton's sole argument for withdrawing his guilty plea – that the circuit court was *required* to rescind his guilty plea because it was *not* voluntarily and intelligently entered. *See Rodriguez v. Commonwealth*, 87 S.W.3d 8, 10 (Ky. 2002) ("[T]he 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 it must be granted.").

In short, Heaton has presented no basis of reversible error. We therefore AFFIRM.

ALL CONCUR.

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