

**IMPORTANT NOTICE**  
**NOT TO BE PUBLISHED OPINION**

***THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28 (4) (c), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS AUTHORITY IN ANY OTHER CASE IN ANY COURT OF THIS STATE.***

RENDERED: OCTOBER 23, 2003  
NOT TO BE PUBLISHED

Supreme Court of Kentucky **FINAL**

2002-SC-0482-MR

DATE 1-22-04 Ena Gray, D.C.

JONATHAN A. BRUCE

APPELLANT

V. APPEAL FROM HARDIN CIRCUIT COURT  
HONORABLE JANET P. COLEMAN, JUDGE  
INDICTMENT NO. 00-CR-00042

COMMONWEALTH OF KENTUCKY

APPELLEE

**MEMORANDUM OPINION OF THE COURT**

AFFIRMING

Appellant pled guilty to criminal attempt to commit murder, first-degree robbery, and theft by unlawful taking over \$300, and received a thirty-year sentence pursuant to a plea agreement with the Commonwealth. He appeals to this Court as a matter of right. Ky. Const. § 110.

Appellant raises two issues on appeal, (1) that the trial court failed to hold the mandatory competency hearing mandated by KRS 504.100, and (2) that his guilty plea was not knowingly, voluntarily, and intelligently made. For the reasons set forth below, we affirm the judgment of the Hardin Circuit Court.

**COMPETENCY**

Appellant alleges that the trial court failed to hold a hearing to determine his competency to stand trial or enter a guilty plea. During several pre-trial conferences,

both the defense counsel and the Commonwealth agreed that Appellant's competency was not in question although Appellant had been sent to Kentucky Correctional Psychiatric Center (KCPC) while in jail due to his depression and "suicidal ideations."

The record is unclear as to the events leading up to Appellant's admission to KCPC. Dr. Frank DeLand, the staff psychiatrist at KCPC, twice evaluated Appellant and his report stated that Appellant had been transferred from the county jail after having threatened to kill himself with a bed sheet fashioned into a rope. Defense counsel stated to the trial court that Appellant had been transferred there from the Hardin County Jail because the jail "did not know what to do with him." It is unclear from the record whether the trial court or the district court ordered that Appellant be evaluated at KCPC.

In any event, Appellant was evaluated and determined to have adjustment disorder with depression and anxiety, but was determined to be competent to understand the legal proceedings against him. Dr. DeLand also determined that Appellant was not suicidal as a result of depression or mental illness, but merely threatened it because he felt the conditions at the county jail were inhumane.

As a result of Appellant having been admitted to KCPC, the Commonwealth made a motion requesting a competency hearing be scheduled for September 25, 2001. This motion was in fact in the record. There was no signed order from the trial court granting the motion; however, all parties appeared in front of the judge on that date.

At the hearing, the trial court began by stating that they were before the court on a defense motion. The prosecutor responded that it was the Commonwealth's motion and that the first order of business should be to have a quick competency hearing. Defense counsel responded by explaining to the trial court that the defendant had had

some emotional problems while awaiting trial and the jail apparently sent him to KCPC because they did not know what else to do with him. As a result, defense counsel continued, the Commonwealth decided that just to be safe, a competency hearing should be scheduled. Defense counsel stated that he had never questioned Appellant's competency and that he and the Commonwealth had discussed that there was no need for Dr. DeLand to testify because both of his reports found Appellant competent. The prosecutor agreed but stated that he felt since the issue had been raised, they were mandated under the law to hold a hearing although both sides agreed that Appellant was competent to enter a plea, which is what Appellant intended to do. The trial court stated that she did not know if they had to do a long, formal hearing if both sides agreed that the defendant was competent. Defense counsel interjected that to his knowledge, the issue of competency had only been raised by the Commonwealth's motion for a hearing. The prosecutor responded that it may have been the district court that ordered Appellant be transferred to KCPC, he wasn't sure, but that he had made a motion for a hearing and in order to move forward, they needed to have a finding of competency. Defense counsel then stated that all that was required of them was to say that they had seen and accepted as written the reports of Dr. DeLand and that "we concur that there are no reasonable grounds on which we can ask the court to find Mr. Bruce not to be competent." The trial court then responded by saying, "given what you've said to me about the history of the case, then, I think it's appropriate . . . and in view of your agreement particularly, that I make a finding then, that he is competent to stand trial, based on what you've just told me."

Appellant correctly notes that KRS 504.100 mandates that the trial court hold a competency hearing if it "has reasonable grounds to believe the defendant is

incompetent to stand trial." Appellant likewise correctly states that a defendant may not waive a competency hearing. Johnson v. Commonwealth, Ky., 103 S.W.3d 687, 692 (2003); Mills v. Commonwealth, Ky., 996 S.W.2d 473, 486 (1999). Although it is arguable and unclear from the record whether there even existed reasonable grounds to question Appellant's competency, we nonetheless find that the trial court complied with the mandate of KRS 504.100 by holding such a competency hearing on September 25, 2001.

Presumably, all parties were present before the trial court on September 25, 2001, upon the Commonwealth's request for a competency hearing. The court had two reports from the staff psychiatrist at KCPC that found Appellant competent to stand trial. Both defense counsel and the Commonwealth agreed that they had read and accepted the findings in the reports and had discussed previously that it was not necessary for Dr. DeLand to testify before the court. Defense counsel stated numerous times that Appellant's competency was not an issue and that the Commonwealth had only scheduled the hearing in an abundance of caution. After having listened to the parties and having reviewed two reports finding Appellant competent, the trial court then made a finding that Appellant was indeed competent to enter a plea of guilty. Accordingly, we find that the trial court thoroughly evaluated Appellant's competency by conducting an evidentiary hearing in compliance with KRS 504.100. There was no error.

#### **GUILTY PLEA**

Next, Appellant contends that the trial court failed to determine whether his guilty plea was knowingly, intelligently, and voluntarily made. After the trial court made a finding of competency, defense counsel stated that Appellant was prepared to enter a plea of guilty. Appellant signed a "Motion to Enter Guilty Plea" that enumerated those

rights specified in Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969), and defense counsel signed a "Certificate of Counsel" acknowledging that he had gone over the rights with Appellant.

The trial court read aloud each right and asked Appellant if he understood that he was giving up those rights, to which Appellant responded that he did understand. Appellant did not inform the trial court of his desire to withdraw his plea until he was scheduled to be sentenced on December 11, 2001. At that time, he asked the judge if he could read a letter that he had written to her regarding his desire to withdraw his plea. The trial court found that Appellant had no basis for asking to withdraw his plea, as his only offered reason was that he just didn't understand what he had done. Appellant also complained that his attorney had only gone to see him a couple of times in jail. Defense counsel then asked the court to appoint conflict counsel to consult with Appellant, as Appellant had intimated that perhaps defense counsel had ineffectively represented him. The Commonwealth objected, but ultimately the trial court continued the hearing so that Appellant could consult with another attorney.

On January 15, 2002, Appellant, represented by conflict counsel, again stated his desire to withdraw his plea. Appellant testified that he felt like he was time-pressured to make a decision during the September 25, 2001 hearing or the Commonwealth's plea offer would have been rescinded. He also stated that it was not until after he went back to jail and "had a few months to think about it," that he decided to change his plea, which he thought he would still be able to withdraw. The trial court stated that it appeared Appellant had just changed his mind and overruled his motion to withdraw his guilty plea. The court specifically recalled having gone over Appellant's rights with him

carefully and that he responded affirmatively that he understood everything he was being told.

Appellant alleges that his confusion during the plea colloquy was evident from his behavior in pausing and conferring with his attorney before answering some of the court's questions. While the trial court was asking Appellant if he understood certain rights, he conferred with his attorney, and after having spent several minutes off the record, defense counsel asked the court if they could continue after the rest of the docket had been called. The trial court agreed and when Appellant returned, the judge specifically asked him numerous times if he had any doubt about his plea. The court also stated several times that Appellant did not have to enter a plea that day, and that if he had a problem with anything, or felt like he wanted to tell the court anything, he did not have to enter a plea. Appellant expressed his desire to proceed with his plea and defense counsel stated that they had conferred off the record regarding a different issue. The trial court started again from the beginning by enumerating those rights Appellant was giving up by pleading guilty and Appellant answered affirmatively to each. He specifically stated that he did not have any questions for the court.

The trial court also stated the possible penalties applicable to Appellant and stated that the facts of the case were such that Appellant had caused serious physical injury by shooting the victim in the face with a handgun.

"The validity of a guilty plea depends 'upon the particular facts and circumstances . . . including the background, experience, and conduct of the accused.'" Kotas v. Commonwealth, Ky., 565 S.W.2d 445, 447 (1978) (quoting Johnson v. Zerbst, 304 U.S. 458, 58 S. Ct. 1019, 82 L. Ed. 1461 (1938)). The trial court is in the best position to evaluate the totality of the circumstances surrounding the plea. Id. Here, the

trial court determined, and the record supports, that Appellant voluntarily entered a guilty plea with a full understanding of the consequences of that decision. Appellant signed a written waiver of his rights. The trial court went over Appellant's signed waiver twice in open court. The trial court repeatedly gave Appellant opportunities to enter the plea at another time and specifically asked Appellant if he had any questions or if he would like to tell the court anything. Appellant responded that he fully understood and did not have any questions for the court. The signed waiver, along with the thoroughness of the plea colloquy, is sufficient to show that Appellant knowingly, voluntarily, and intelligently entered a guilty plea.

RCr 8.10 states that a court *may* permit a defendant to withdraw a guilty plea. The decision to do so is within the sound discretion of the trial court. Bronk v. Commonwealth, Ky., 58 S.W.3d 482, 487 (2001); Anderson v. Commonwealth, Ky., 507 S.W.2d 187, 188 (1974). Appellant did not allege a misunderstanding of the ramifications of his guilty plea until several months after it was entered. The trial court found that Appellant did not offer any basis in support of his motion to withdraw his guilty plea. We cannot say that the trial court abused its discretion in refusing to allow Appellant to withdraw his plea. Accordingly, there was no error.

For the above-stated reasons, we affirm the judgment of the Hardin Circuit Court.

All concur.



COUNSEL FOR APPELLANT:

Lisa Bridges Clare  
Assistant Public Advocate  
Department of Public Advocacy  
100 Fair Oaks Lane, Suite 302  
Frankfort, KY 40601

COUNSEL FOR APPELLEE:

A. B. Chandler, III  
Attorney General  
Capitol Building  
Frankfort, KY 40601

Michael Harned  
Assistant Attorney General  
Office of Attorney General  
Criminal Appellate Division  
1024 Capital Center Drive  
Frankfort, KY 40601-8204

William Robert Long, Jr.  
Assistant Attorney General  
Criminal Appellate Division  
1024 Capital Center Drive  
Frankfort, KY 40601-8204