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NOT TO BE PUBLISHED OPINION

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RENDERED: AUGUST 27, 2009

NOT TO BE PUBLISHED

Supreme Court of Kentucky

2007-SC-000524-MR

FINAL

ANGELYNNA YOUNG
(A/K/A ANGELYNNA YOUNG-HOWE)

DATE 9/17/09 Kelly Klaber D.C.
APPELLANT

V. ON APPEAL FROM GRANT CIRCUIT COURT
HONORABLE STEPHEN L. BATES, JUDGE
NO. 07-CR-00023

COMMONWEALTH OF KENTUCKY

APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Angelynna Young appeals as a matter of right from a July 5, 2007 Judgment of the Grant Circuit Court convicting her of obtaining a controlled substance by fraud, possession of a controlled substance in the first degree (two counts), possession of marijuana (three counts), possession of a controlled substance in the second degree, possession of drug paraphernalia, assault in the first degree (two counts), and wanton endangerment in the first degree (fifteen counts). After Young pled guilty to these twenty-five counts, the trial court sentenced her to a total of twenty-two years' imprisonment in accordance with the Commonwealth's recommendation. Young's sole argument on appeal is that the trial court erred in refusing to permit her to withdraw her guilty

plea. Convinced that the trial court correctly determined that Young's guilty plea was made knowingly and voluntarily and that the court acted within its discretion in denying Young's motion to withdraw her plea, we affirm.

RELEVANT FACTS

On January 17, 2007, Angelynna Young, a Grant County school bus driver, commenced her job of transporting students from their respective houses to Grant County Middle School. While en route to the school, at approximately 8:00 a.m., Young drove off the right side of the road onto the shoulder, overcompensated, drove back across both lanes of traffic, and hit a light pole on the left side of the road. All seventeen children on the bus were injured in some way, but the two children seated closest to the light pole's point of impact suffered critical injuries. Cody Shively, age twelve, suffered facial fractures and severe injuries to his brain and spine. Cody was hospitalized in an intensive care unit for one month and spent three months at Children's Hospital in Cincinnati. Jacob Clise, age fourteen, was thrown through the bus window as a result of the impact. Jacob was airlifted to Children's Hospital in Cincinnati after the bus crash and he ultimately lost his left eye and both his sense of smell and taste.

Following the wreck, Young was transported to St. Elizabeth's Hospital South, where she was treated and released later that morning. While being treated, hospital personnel collected blood and urine samples from Young. The hospital lab performed a urine-based toxicology screening, which revealed the presence of Fioricet, Darvocet, cocaine, Valium, and marijuana in Young's

system. The hospital also tested Young's blood for alcohol, but the test produced a negative result.¹ After she was released from the hospital, Young traveled to the Grant County "bus barn," where she was interviewed by Kentucky State Police Detective Kevin Flick. Young told Detective Flick that she was currently taking several medications, including Valium, Zomig, Percocet, and Darvocet. Young also revealed that the night before the accident, she had gone to bed around 12:30 a.m., and woke up at approximately 5:00 a.m. The Commonwealth notes in its brief that Young's cell phone records indicate a call made from that phone at 2:17 a.m. the morning of the accident; that Young had ingested at least four different drugs that night; that Young had told her boyfriend she had "snorted cocaine" that morning "to get her going"; and that Young had told her children's babysitter that she had been up all night and had not slept.

The day after the wreck, on January 18, 2007, Detective Flick obtained a search warrant for Young's apartment. In the course of the search, Detective Flick found cocaine, hydrocodone, marijuana, and drug paraphernalia in Young's residence. On February 14, 2007, a Grant County Grand Jury indicted Young with one count of obtaining a controlled substance by fraud, two counts of possession of a controlled substance (cocaine) in the first degree,

¹ The hospital lab used all of Young's urine sample in conducting its tests. The remaining portion of Young's blood sample was obtained by the Kentucky State Police on January 19, 2007, and transported to the Kentucky State Police Laboratory in Frankfort, Kentucky, for further testing. However, a subsequent testing of Young's blood sample showed none of the drugs that had previously been present in her urinalysis. The Commonwealth explained the conflicting results by contending that Young's blood sample was improperly stored at the police lab in a red-top container without the necessary preservatives.

one count of possession of a controlled substance (hydrocodone) in the second degree, three counts of possession of marijuana, one count of possession of drug paraphernalia, two counts of assault in the first degree, and fifteen counts of wanton endangerment in the first degree. On that same day, Young entered a plea of not guilty to the twenty-five counts.

In the next six months, Young filed several motions with the trial court, including a motion to sever counts of the indictment, a motion to reconsider an adverse ruling on that motion, a motion in limine, a motion to suppress the items found in Young's home, a motion to suppress urinalysis results, a motion to suppress Young's statement, and a motion to transfer venue. In addition to motion hour appearances, there were two pre-trial conferences. Young also submitted numerous discovery requests to the Commonwealth in preparation for trial and ultimately over 1000 pages of discovery were filed in the record.

After the trial court denied the majority of Young's pre-trial motions, on June 20, 2007, Young appeared before the Grant Circuit Court in order to enter a guilty plea. However, after Young informed the judge that she was not satisfied with how her attorneys² had investigated her case and that she did not believe she was guilty of the charges being brought against her, the trial court abandoned the plea colloquy in order to give Young more time to reflect on her decision and to consult with counsel.

² The transcripts of the court proceedings on June 20, 2007, June 22, 2007, and July 5, 2007, reflect that Young was represented by three attorneys, all of whom were present on her behalf.

Two days later, on June 22, 2007, Young appeared again before the trial court and pled guilty to all twenty-five charges. During this plea colloquy, the prosecutor reviewed each of Young's charges and the corresponding sentencing recommendations. The trial judge then asked Young a series of questions, including whether she had reviewed the plea agreement with her attorney; whether she had questions for him, the judge, about the plea; whether her decision was impaired because of drugs or alcohol; whether she understood that she was giving up certain specific constitutional rights by pleading guilty; whether anyone had forced her to plead guilty; and whether she was guilty of the charges to which she was pleading. The trial court then accepted Young's guilty plea and set a date for her sentencing hearing.

On July 5, 2007, before the trial court entered Young's final judgment and sentence, Young read a statement to the court and the families of the children involved in the wreck, many of whom were present for the sentencing. Young stated that she was "not guilty of extremely [sic] difference [sic] to these children's lives" and that she was "here to say that I am not guilty and I withdraw my guilty plea." Quoting from the Bible, she expressed a desire to leave the matter in God's control and to relieve her own children of the belief that she was guilty. During a bench conference, Young's counsel informed the court that this was the first time she had learned of Young's desire to withdraw her guilty plea. The court then called a recess so that Young could speak with her attorneys. Upon returning, the trial court heard arguments from both sides regarding Young's motion to withdraw her plea.

Young's counsel stated that Young had been struggling with this decision all along and that she simply did not believe she was guilty as charged. The Commonwealth responded that Young had knowingly, voluntarily, and intelligently pled guilty to all twenty-five counts at her previous court appearance approximately two weeks earlier, and it would be inappropriate to allow Young to withdraw her guilty plea now. Young then made another statement to the court, in which she apologized for previously pleading guilty, explained that she had been told that taking the plea would be her only chance, and reiterated that she now wanted to withdraw her plea and "put my faith in God and go from there." The trial court then orally denied Young's motion to withdraw her plea and entered a written order finding that her "plea of guilty was knowingly and voluntarily made and with an understanding of the nature of the charges." Subsequently, the trial court adopted the plea agreement reached by Young and the Commonwealth and sentenced Young to twenty-two years' imprisonment. This appeal followed.

ANALYSIS

I. The Supreme Court Is the Proper Court In Which To Bring This Appeal.

Before reaching the merits of Young's appeal, the Commonwealth asks this Court to address whether the matter should be addressed first to the Court of Appeals. The Commonwealth contends that because Young is appealing from the trial court's order denying her motion to withdraw her guilty plea and not from a judgment, it is not clear that her appeal should proceed directly to this Court pursuant to Section 110(2)(b) of the Kentucky

Constitution, which states only that “[a]ppeals from a *judgment* of the Circuit Court imposing a sentence of death or life imprisonment or imprisonment for twenty years or more shall be taken directly to the Supreme Court.” (Emphasis added). However, appeals raising this precise type of trial court error have consistently been brought to this Court when the defendant has been sentenced to twenty years or more imprisonment. See, e.g., Edmonds v. Commonwealth, 189 S.W.3d 558, 561 (Ky. 2006) (defendant appealed the final judgment entered pursuant to his guilty plea arguing that the trial court erred in overruling three separate motions, one of which was his motion to withdraw his guilty plea); Bronk v. Commonwealth, 58 S.W.3d 482, 484 (Ky. 2001) (defendant appealed from a final judgment and sentence, alleging only that the trial court erred when it denied his motion to withdraw his guilty plea); Rodriguez v. Commonwealth, 87 S.W.3d 8 (Ky. 2002) (defendant appealed after final judgment was entered, arguing only that the trial court erred in not granting his motion to withdraw his guilty plea). All of the above-mentioned cases were properly heard and decided by the Kentucky Supreme Court, as appeals from the judgment entered after the trial court denied the defendant’s motion to withdraw the guilty plea. Similarly, although Young is alleging that her conviction and sentence should be vacated because of the trial court’s error in denying her motion to withdraw her plea, this action is ultimately an appeal from a judgment and is properly before this Court as a matter of right. Ky. Const. § 110 (2)(b).

II. Based On the Totality of Circumstances, Young's Guilty Plea Was Made Knowingly, Voluntarily, and With An Understanding of the Nature of the Charges and the Trial Court Did Not Err In Denying Her Motion to Withdraw Her Plea.

Before a trial court may accept a criminal defendant's guilty plea, it must first determine that the plea is made voluntarily and with an understanding of the nature of the charges. RCr 8.08. In order to ensure the defendant is aware of the consequences of pleading guilty, including the constitutional rights he is waiving, a trial court is required to conduct a hearing on the record in order to verify that the defendant's plea is made knowingly and voluntarily. Boykin v. Alabama, 395 U.S. 238, 241-42 (1969). RCr 8.10 provides that a defendant may withdraw his guilty plea with the permission of the court any time before final judgment is entered.

If a defendant moves to withdraw his guilty plea because it was made involuntarily, the court should conduct a hearing to determine whether the plea was voluntary. Rodriguez, 87 S.W.3d at 10. If the court concludes that the guilty plea was involuntary, the defendant's motion to withdraw must be granted. Id. If the court concludes based on the totality of the circumstances that the plea was voluntary, it has the discretion either to grant or deny the defendant's motion to withdraw. On appeal, a trial court's determination to deny a defendant's motion to withdraw his guilty plea is reviewed for clear error, which means the decision will be upheld if it is supported by substantial evidence. Edmonds, 189 S.W.3d at 566.

"A plea may be involuntary either because the accused does not understand the nature of the constitutional protections that he is waiving, or

because he has such an incomplete understanding of the charge that his plea cannot stand as an intelligent admission of guilt.” Henderson v. Morgan, 426 U.S. 637, 645 n.13 (1976) (internal citations omitted). “A guilty plea is intelligent if a defendant is advised by competent counsel regarding the consequences of entering a guilty plea . . . , is informed of the nature of the charge against him, and is competent at the time the plea is entered.” Edmonds, 189 S.W.3d at 566.

Here, Young contends that her plea was neither intelligent nor voluntary primarily because the trial court did not discuss with her during the plea colloquy the facts supporting each of her charges or the evidence the Commonwealth intended to present at trial.³ Although Young is correct that this practice is preferable and that the trial court in Edmonds, supra, did review the Commonwealth’s evidence prior to accepting the defendant’s plea, Young misstates the law by contending that a review of this evidence “is a critical part of any Boykin hearing.” In Boykin, 395 U.S. at 243, the U.S. Supreme Court identified three federal constitutional rights that a trial court should discuss with a defendant—the right against self-incrimination, the right

³ Young also briefly complains that the trial court should have asked her more questions to ensure that she understood the full range of penalties she was facing. As will be evident in this Court’s subsequent discussion, however, the Commonwealth described the different charges in Young’s plea agreement and the sentencing recommendation associated with each separate count. Also, the plea agreement, which Young signed, specified the class of each felony and misdemeanor to which she was pleading and the applicable penalty range for each. Thus, even though the trial court may not have orally reviewed the sentencing options for each offense with Young, a detailed discussion of her twenty-two year prison sentence was part of Young’s plea colloquy and the written agreement plainly informed her of the relevant penalty ranges on each offense.

to a jury trial, and the right to confront one's accusers—but did not specifically instruct trial courts to review the underlying facts of the charges.

Reviewing the facts on which each of the charges is based is always the best practice. However, a trial court's failure to review the underlying facts does not automatically make a defendant's plea involuntary if the totality of the circumstances indicates otherwise. In this case, because of the extensive pre-trial proceedings prior to her guilty plea, the plea documents themselves which incorporated the indictment, and the nearly 1000 pages of discovery provided by the Commonwealth prior to her plea, we disagree that the trial court's failure to review the specific facts underlying each of her charges or the evidence the Commonwealth intended to present rendered her guilty plea involuntary or unintelligent. Thus, the trial court did not err in refusing to permit Young to withdraw her guilty plea.

Young's plea colloquy began with the Commonwealth describing the twenty-five counts in Young's indictment. The prosecutor explained that these counts included eighteen Class D felonies, five Class A misdemeanors, and two Class B felonies. The Commonwealth identified its sentencing recommendation for each different count, including whether Young's sentences should run concurrently or consecutively. In addition, the prosecutor specified that Young's sentences for the two Class B felonies would be served in accordance with the eighty-five percent parole eligibility rule. The prosecutor explained that this was due to the two children on the bus who were seriously injured and stated that Young would be acknowledging that parole limitation in her

plea. The Commonwealth concluded that the effect of the plea would be a twenty-two year prison sentence.

The trial court then asked both Young's counsel and Young herself if the Commonwealth's description matched their understanding of the plea agreement. Both Young and Young's counsel answered yes. The trial court then began its plea colloquy with Young. The trial judge asked Young whether she had reviewed the plea agreement with her attorneys; whether she had any questions for the trial court about anything in the agreement; whether she was under the influence of drugs or alcohol that would affect her ability to understand what she was doing; whether she understood that by pleading guilty she was giving up her constitutional right to a trial by judge or jury, to confront and cross-examine whoever testified against her, to subpoena people to make them come to court to tell her side of things, and to not testify or incriminate herself; whether she had had enough time to speak with her attorneys so that she felt comfortable entering a plea of guilty; whether she was satisfied with her attorneys; whether anyone made any kind of threat or promise to force her to plead guilty against her will; and whether she was pleading guilty because she was guilty of the charges against her. Young's responses to these questions indicated that she understood the rights she was waiving and the substance of her plea agreement, acknowledged that she was guilty of the charges being brought against her, and did not have any further questions about pleading guilty.

The trial court also asked Young's counsel if he knew of any indication that Young was impaired by drugs or alcohol, whether he believed Young understood her charges and her constitutional rights, whether Young would be able to assist him in her defense if that became necessary, whether he knew of any reason why she should not accept this plea, and whether the plea was being made knowingly, voluntarily, and understandingly with a factual basis. The trial court also asked all the parties whether they were acknowledging for the record that there was a serious physical injury with regard to two victims of the bus wreck. The trial court also made a statement to Young about a conversation they had had earlier in the week when Young first attempted to enter a guilty plea. The trial judge stated,

I spoke with you briefly off the record in court on Wednesday, stepped back in the presence of your counsel and the Commonwealth, and explained at that time, of course, if you wanted to plead guilty you are welcome to do so but would have to answer these questions in a certain fashion to do that. If you wanted to proceed with the jury trial, I would be happy to do that for you. Is that the substance of our conversation at that time?

Young responded, "Yes, sir."

As evident from the record, the trial court specifically informed Young of her constitutional rights and ensured that she had a thorough understanding of the rights she was waiving by entering a guilty plea. As noted above, reviewing on the record the facts supporting a defendant's charges is the preferred practice when a trial court accepts a guilty plea. Although that did not occur in this case, Young's participation in extensive pre-trial proceedings, the written plea agreement, and Young's assurances on the record that she had

been thoroughly advised by counsel and was pleading guilty intelligently and voluntarily, demonstrate that her guilty plea was entered knowingly, intelligently, and voluntarily.

Notably, this is not a case where a defendant is indicted and then quickly enters a guilty plea without time to understand adequately the facts underlying each of his charges. In those cases, a failure to review the factual predicate for each charge during the plea colloquy could well be sufficient basis for establishing the plea was not intelligently and knowingly entered. Here, given the totality of the circumstances, this Court is hard-pressed to conclude that after six months of extensive trial preparation, Young did not understand the facts on which her charges were based. Thus, even though the trial court should have reviewed the facts on the record prior to accepting Young's guilty plea, its failure to do so did not prevent Young's plea from being an intelligent admission of guilt with a complete understanding of the factual basis of her charges. Because there is substantial evidence in the record to support the trial court's determination that Young's guilty plea was entered knowingly, intelligently, and voluntarily, Edmonds, 189 S.W.3d at 566, the court did not err in denying Young's motion to withdraw her plea.

Young also argues that in considering whether to grant her motion to withdraw, the trial court did not conduct an adequate hearing to determine if her plea was truly voluntary. Young contends that the trial court should have determined on the record why Young had such a difficult time entering her plea. However, case law is clear that upon a defendant's motion to withdraw a

guilty plea, a trial court may refer to its prior Boykin hearing in concluding that the defendant's plea was entered voluntarily. Edmonds, 189 S.W.3d at 566. Here, during the brief hearing on Young's motion to withdraw her plea, the trial court stated in open court that it would "make an exhibit" of the June 22, 2007 transcript of Young's plea colloquy and agreed that it would consider this transcript when deciding whether Young's plea was voluntary. After Young made her own statement regarding her religious and personal reasons for wanting to withdraw her plea and both sides made their arguments as to whether that unexpected motion should be granted, the trial court orally denied her motion and subsequently entered a written order finding that Young's guilty plea was "knowingly and voluntarily made and with an understanding of the nature of the charges." The trial court properly relied on its prior Boykin colloquy in concluding that Young's plea had been voluntary and was not required to further inquire into why Young later wanted to withdraw it, particularly given the fact that her stated reasons were purely personal and had no bearing on the voluntary, knowing and intelligent nature of her plea two weeks earlier.

CONCLUSION

The better practice for trial courts accepting guilty pleas is to recite the underlying facts on which the charges are based. However, in this case, there was substantial evidence in the record indicating that Young's guilty plea was nonetheless made knowingly, intelligently, and voluntarily. Therefore, the trial court was not clearly erroneous in concluding that Young's plea was voluntary

and did not err in denying Young's motion to withdraw her guilty plea. The July 5, 2007 Judgment of the Grant Circuit Court is hereby affirmed.

All sitting. All concur.

COUNSEL FOR APPELLANT:

Shelly R. Fears
Assistant Public Advocate
Department of Public Advocacy
100 Fair Oaks Lane, Suite 302
Frankfort, KY 40601-1133

COUNSEL FOR APPELLEE:

Jack Conway
Attorney General

Perry Thomas Ryan
Assistant Attorney General
Office of Attorney General
Criminal Appellate Division
1024 Capital Center Drive
Frankfort, KY 40601-8204