

# Commonwealth Of Kentucky

## Court Of Appeals

No. 1996-CA-003098-MR

CHRISTOPHER A. ESTEP

APPELLANT

v. APPEAL FROM MADISON CIRCUIT COURT  
HONORABLE JULIA HYLTON ADAMS, JUDGE  
ACTION NO. 88-CR-030

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ABRAMSON, GARDNER, and GUIDUGLI, Judges.

ABRAMSON, JUDGE: Christopher Estep appeals pro se from a November 4, 1996, order of Madison Circuit Court denying his RCr 11.42 motion for relief from a criminal judgment. Estep was indicted in May 1988 on three counts of unlawfully obtaining or attempting to obtain controlled substances by fraud or forgery (KRS 218A.140, 218A.990(11)). He was accused of obtaining or attempting to obtain Valium by means of forged prescriptions and was subject to sentencing as a first-degree persistent felon (KRS 532.080). In August 1989, Estep pled guilty but mentally ill to one count of unlawfully obtaining a controlled substance and was

sentenced as a second-degree persistent felon to five years in prison. Estep now claims that his guilty plea was invalid. First, he alleges that the medication for treatment of anxiety which he was receiving at the time either rendered him incompetent to plead guilty or rendered his plea involuntary. He further alleges that his plea was uninformed due to the ineffective assistance of his appointed counsel and to the trial court's denial of his request for access to a law library and other resources. The trial court, relying on the existing record, denied Estep's motion for relief from his guilty plea. We review the trial court's decision de novo, asking as it did, whether the record refutes Estep's allegations and whether any unrefuted allegations, if proved, would entitle Estep to relief. Hopewell v. Commonwealth, Ky. App., 687 S.W.2d 153 (1985).

Estep correctly asserts that a trial court may not accept a guilty plea without having found that the defendant is proceeding competently, voluntarily, and knowingly. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969); Gabbard v. Commonwealth, Ky., 887 S.W.2d 547 (1994); Lynch v. Commonwealth, Ky. App., 610 S.W.2d 902 (1980). The competence required to plead guilty is essentially the same as that necessary to stand trial: the defendant must be able to appreciate the nature and the consequences of the proceedings against him and must be able to participate rationally in the decision to forego a defense. Godinez v. Moran, 509 U.S. 389, 113 S. Ct. 2680, 125 L. Ed. 2d 321 (1993); Short v. Commonwealth,

Ky., 519 S.W.2d 828 (1975). The plea must be voluntary: the defendant must not be proceeding under coercion or duress, or in response to improper threats or promises. The plea, finally, must be sufficiently knowing: the defendant must understand the rights he is waiving and must understand the charges against him well enough to make a reliable admission of guilt. Henderson v. Morgan, 426 U.S. 637, 96 S. Ct. 2253, 49 L. Ed. 2d 108 (1976). A plea is not rendered unknowing by the defendant's ignorance of its collateral consequences, such as the possibility of consecutive sentences. Centers v. Commonwealth, Ky. App., 799 S.W.2d 51 (1990).

Given these standards, the validity of a guilty plea is to be determined "from the totality of the circumstances surrounding it." Kotas v. Commonwealth, Ky., 565 S.W.2d 445, 447 (1978). After a careful review of the videotaped guilty plea proceedings, we agree with the trial court that the record here refutes Estep's claim that his plea was invalid. Estep was competent to plead guilty. Although at the time of his plea Estep was being medicated for anxiety, his responses and comments during the plea colloquy indicate that he was functioning mentally, that he understood the nature and consequences of the proceeding, and that he was capable of working with his counsel. Estep informed the trial court that he was suffering from acute anxiety, not only at the prospect of being sent to prison, but also because he had experienced terrible bouts of alienation from himself as well as from others and doubted his ability to keep

those thoughts and feelings at bay. Estep told the court that he was taking medicine for his anxiety, but assured the court that it had not impaired his judgment. Estep's responses to the court's questions included some evidence of his distress. When asked his age, Estep replied, "In this world I am 29," and he made other references to "this world" suggesting that his sense of ordinary reality was tenuous and open to doubt.

These signs of distress, however, were accompanied by clear evidence that Estep understood his predicament and was capable of rationally weighing his choices. He recognized, for example, that his anxiety and its accompanying thoughts were an impairment for which he could be treated. He reminded the court several times that he was pleading guilty but mentally ill, and he expressed his desire for help. He was articulate and recounted incidents in his past as well as his present concerns with precision, even eloquence at times. He demonstrated that he fully comprehended the trial court's sentencing role including the breadth of the judge's discretion. He acknowledged counsel's efforts on his behalf, indicated that he trusted her, and took an opportunity to confer with her during this proceeding. He described the incident at the pharmacy for which he had been arrested and admitted knowing at the time that what he was involved in was wrong. In sum, Estep appeared troubled, but nonetheless self-aware, articulate, thoughtful, and competent to decide that pleading guilty but mentally ill was the preferable option available to him.

Estep's plea was voluntary. Estep suggests that he pled guilty to avoid being withdrawn from the medicine he had been receiving. He has failed, however, to show that a plea of not guilty would have had that result. Nor has he shown that he was addicted to this medicine and would in fact have suffered from its withdrawal. These showings are necessary under RCr 11.42(5), which requires that claims for relief state specific facts calling for an extraordinary remedy. Gross v. Commonwealth, Ky., 648 S.W.2d 853 (1983). Furthermore, while Estep's desire for treatment may have borne on his decision to plead guilty, we are not persuaded that it did so in such a way as to have rendered his guilty plea involuntary.

Nor was Estep's plea unknowing. Estep claims that counsel failed to press for a competency determination. He also claims that he was denied an opportunity to make up for counsel's shortcomings when he was denied access to legal research facilities and materials. Again, however, Estep has not specified what advice counsel should have provided nor what right was left undiscovered in the law library. As noted above, the record shows that at the time of his plea Estep was already receiving psychiatric attention, but no issue had arisen concerning his competence. The record also suggests that although Estep may have been distraught, he understood his situation and could communicate meaningfully with counsel. Counsel cannot be said to have erred, therefore, by foregoing a competency determination. The record also shows that Estep's

plea and sentence were fair. Under the original indictment, Estep faced a possible sentence of as much as 60 years in prison. His plea guaranteed a far shorter sentence and also ensured that he would receive the psychiatric treatment he needed. Estep has offered no reason to think that he would have declined to plead guilty or would have obtained a more favorable result had he been allowed greater access to legal resources. He thus has not stated grounds for RCr 11.42 relief. Gross, supra.

For these reasons, we conclude that Estep's guilty plea was valid. Accordingly, we affirm the November 4, 1996, order of Madison Circuit Court.

ALL CONCUR.

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