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Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-001587-DG

KAREN A. MULLAKANDOV — APPELLANT

v.

ON DISCRETIONARY REVIEW FROM LOGAN CIRCUIT COURT
HONORABLE TYLER L. GILL, JUDGE
ACTION NO. 15-XX-00005

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, DIXON, AND NICKELL, JUDGES.

NICKELL, JUDGE: On January 24, 2015, Karen Mullakandov was arrested on a single count of operating a motor vehicle while under the influence of alcohol or drugs (DUI), first offense.[1] On January 26, 2015, without counsel, she was arraigned in Logan District Court where she and other defendants were read their

[1] Kentucky Revised Statutes (KRS), 189A.010(5)(a), a misdemeanor.

constitutional rights by the judge. Minutes later, still without counsel, she entered an unconditional guilty plea as charged. The court sentenced her consistent with the Commonwealth's offer—no additional time, DUI counseling, license suspension for thirty days or until completion of counseling, and payment of $1,083 in fines and costs. Despite assuring the court she could pay the fines and costs as soon as she returned to the jail, timely payment was not forthcoming and in February a bench warrant was issued for her arrest.

Two to three weeks after pleading guilty, Mullakandov hired private counsel. Nearly a month later, she moved to withdraw her guilty plea, claiming it had been unknowingly and involuntarily entered because: an unnamed officer had told her she could not leave Kentucky without posting a large cash bond or pleading guilty; she never affirmatively waived her right to a jury trial, to counsel, or to confront her accuser; and, despite being required by *Boykin v. Alabama,* 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969), she was never told the consequences of pleading guilty without counsel. After a brief hearing, at which Mullakandov testified, the motion to withdraw her plea was denied by the district court. She then appealed as a matter of right to the Logan Circuit Court which, after another hearing, found the plea to have been voluntarily and intelligently entered, and affirmed denial of the motion to withdraw the plea.

We granted Mullakandov's request for discretionary review to explore the inquiry a court must make of an unrepresented criminal defendant before allowing her to plead guilty, and whether the accused must explicitly waive the

right to an attorney. Mullakandov argues a hearing consistent with *Faretta v. California*, 422 U.S. 806, 807, 95 S.Ct. 2525, 2527, 45 L.Ed.2d 562 (1975), is required. The Commonwealth argues this case is not governed by *Faretta,* which applies to unrepresented defendants preparing to *stand trial,* but rather, is more akin to *Iowa v. Tovar*, 541 U.S. 77, 78, 124 S. Ct. 1379, 1382, 158 L. Ed. 2d 209 (2004), pertaining to *pro se* defendants preparing to *enter a guilty plea*. Concluding the district court sufficiently canvassed Mullakandov's constitutional rights with her before accepting her guilty plea, we affirm.

FACTS

Mullakandov flew east from her home in Phoenix, Arizona, to attend a funeral. Whether the funeral was in Kentucky or Tennessee is unclear,[2] but at 3:45 p.m. on January 24, 2015, Russellville (Kentucky) Police responded to a complaint of a reckless driver on Nashville Road. On arrival, Mullakandov was found passed out in a car on the Logan Memorial Hospital parking lot with the engine running. She was arrested that afternoon and jailed.

According to Mullakandov, sixteen or so hours after being jailed, she was interviewed by an unidentified man who told her she did not qualify for a free attorney because she earned too much money and the value of her home was too great. A few hours later, an unnamed female deputy jailer came to her cell and told her bond had been set at $2,500, but even if she posted bond she could not

[2] During argument before the circuit court, defense counsel stated Mullakandov was visiting Springfield, Tennessee, became lost, and was ultimately discovered in Logan County, Kentucky.

leave Logan County for two weeks despite having a plane ticket to return to Arizona the following day. Mullakandov telephoned her husband who offered to post bond, but she told him not to bother because she would not be allowed to leave Logan County for two weeks.

On Monday, January 26, 2015, at 7:58 a.m., the Logan District Court conducted arraignments, reading a statement of constitutional rights to several defendants, including Mullankandov, *en masse.* The statement of rights given by the court was as follows:

> Welcome to Logan District Court. I have some rights to read to ya'll this morning so listen very carefully.
>
> You are presumed to be innocent until proven guilty beyond a reasonable doubt. The Commonwealth has the burden of proving the guilt beyond a reasonable doubt, and the Commonwealth—represented by Mr. Joe Ross and his assistant, Elizabeth Teel.
>
> You have the right to remain silent. Anything you say may be used as evidence against you.
>
> You have the right of confrontation. This means that you may confront and question face-to-face those who are accusing you, and all witnesses, under oath.
>
> You have the right to produce evidence and to compel production of evidence. This means you may put on evidence of your own and you may force someone with relevant evid—knowledge and evidence—to come to court to testify, even if they do not wish to appear voluntarily. And you may produce in court relevant physical evidence, such as documents or physical objects, even if the person who possesses them will not produce them voluntarily. You may require the attendance of witnesses and production of physical evidence through a

subpoena, issued by the clerk of court, and served on the witnesses or person who possesses the physical evidence.

You have the right to a trial by jury. If you are charged with a felony, your trial will take place in circuit court. If you are charged with a misdemeanor or violation, your trial will take place here in district court. You may waive –or give up—your right to a jury trial and be tried by me, the Judge of the District Court, if the attorney for the Commonwealth agrees.

You have the right to an attorney. If you cannot afford an attorney, and if you can satisfy this Court of that fact under oath, under penalty of perjury, then an attorney will be appointed to represent you. A fee may be assessed against you for this attorney. The right to an appointed attorney only applies if the charge against you carries a possibility of jail or a fine of more than $500.

You have the right to appeal from any final decision of this court. If you plead guilty as to any charge against you, then concerning that charge you will be waiving all of your rights, including the right to appeal. If you are charged with a felony, you have a right to an appeal from a final decision of the Circuit Court.

If you are charged with a felony—an offense punishable by at least one year in the state penitentiary, and up—you have the right to a preliminary hearing. The purpose of this hearing is to determine whether probable cause exists that a crime has been committed and that you are the person who committed it. You may waive this hearing and your case will be submitted directly to the Grand Jury.

A plea of guilty or a finding of guilt will result in a conviction on your record. In many instances if you are later convicted of another crime, a present conviction will be used to enhance or make worse the penalty of the next offense.

You have the right to expunge, or have removed from the court record, some misdemeanor convictions after five

years from the date of conviction. If you plead not guilty, you will be given a pretrial conference date and a trial date will be set then, or at a later pretrial conference date.

If you choose to accept any recommendation of the Commonwealth and a plea of guilt—and plead guilty, you will be waiving the constitutional rights as I said, and just explained, and I will proceed to sentencing today consistent with the offer from the Commonwealth upon my approval.

If you are sentenced today, I expect you to pay any fines and court costs today. If you cannot pay them today, I will set a deadline date for you to have the fines and costs paid. If you have the fines and costs paid in full by that date, or have fulfilled other requirements such as counseling or payment into the drug fund, you will not have to return to court. If you do not have the fines and costs paid in full and have not fulfilled other requirements by the deadline date, you will need to return and show cause why you should not be held in contempt and face being incarcerated for up to six months or serve off the fines and costs, if the fines and costs are eligible to be converted to jail time. If you do not have fines and costs paid in full by the deadline date and you fail to return, a bench warrant will be issued for your arrest for failure to appear, and possibly a new misdemeanor criminal charge of contempt of court will be initiated.

And those are your rights ladies and gentlemen. And with that, uh Mr. Ross.

Mullakandov was the second defendant arraigned that morning. She stepped to the podium wearing an orange jumpsuit and the following colloquy occurred.

COURT: Karen Mullakandov. 15T-121. Ma'am you're charged with operating a vehicle under the influence of alcohol, drug—and/or drugs, first offense. Uh, you understand that charge?

MULLAKANDOV:	Somewhat.
COURT:	Ok, did you understand the rights I read to you today?
MULLAKANDOV:	Yes.
COURT:	Ok. Um, Mr. Ross have you had time to review this?
COMMONWEALTH:	Your honor, I have. It sounds like it's a very uh concerning situation and there's definitely proof upon which to proceed. I don't see any record and she is out of state so with that I would be willing to treat her like a first offense, being as that what her record it appears is . . .
COURT:	Ma'am, listen very carefully. He's gonna. . .
COMMONWEALTH:	Offer uh credit for time served; no additional jail time. $783.00 in fines and costs, 15 hours community service, uh counseling would be required and uh that would be a minimum of 30 days; uh however, uh your license suspension would be up to the state of Arizona, if that is the last place where you had a driver's license.[3]

[3] From our review of the district court's reading of the rights *en masse* and the plea colloquy, Mullakandov was not orally told the penalty range for a DUI, first offense. However, the range appears on page one of AOC-495, the DUI (Guilty Plea) form, a document Mullakandov admits signing. By signing the form she impliedly waived the rights contained in it and any objections to it. *Wise v. Commonwealth,* 422 S.W.3d 262, 271-72 (Ky. 2013) (signing agreement to take, followed by taking, polygraph examination relinquished rights afforded). *See also Hathaway v. Eckerle*, 336 S.W.3d 83, 89–90 (Ky. 2011) (signing contract creates presumption signer knows its content). (Footnote added).

MULLAKANDOV: That's where I live, yes.

COMMONWEALTH: Ok, so, with that I would be uh willing to resolve it today with no jail time or none probated and the minimum uh fines and costs available, your Honor.

COURT: Mr. Ross have uh. . . if . . . ma'am, if she lives in Arizona, are you planning on returning to Arizona?

MULLAKANDOV: Yes.

COURT: Ok, is this the only thing that's keeping you in Kentucky?

MULLAKANDOV: Well, I only came out here just for my cousin's funeral today.

COURT: So what, what we uh—Mr. Ross have you contemplated a uh possibly allowing her to pay a fine over the community service?

COMMONWEALTH: We. We could do that your Honor, um, if you would uh like to make it a $1,083 and no community service that would be agreeable as well.

COURT: Ma'am, do you understand the offer that the Commonwealth has made to you today?

MULLAKANDOV: My understanding is, if I pay $1,083, I can go home.

COURT: Well . . . .

MULLAKANDOV: Sort of?

COURT: It's not pay or go home. It's not that at all.

MULLAKANDOV: (nodding) Right. I know.

COURT: The bottom line, is whether you're guilty or not, and we'll get there in just a moment, OK?

MULLAKANDOV: OK.

COURT: What the Commonwealth is saying to you, that they're making an offer to resolve this. And we only want you to resolve it if—if you're guilty.

MULLAKANDOV: I want to resolve it.

COURT: And what, what the issue is, that because you live in Arizona, there's still a requirement that Kentucky says if you come to our state and you get a DUI charge, there's some things you gotta do.

MULLAKANDOV: (nodding) Right. OK.

COURT: Whether you live here, or in the northernmost point in Alaska,

MULLAKANDOV: Right.

COURT: and one of those things you've got to at least initiate or, or meet with the counseling service here. Now, whether they can transfer it to Arizona or not would be up to them and

whether it can be transferred, but would at least have to meet with them here.

MULLAKANDOV: OK.

COURT: Uh, and then, Mr. Ross is saying that uh, because of where you live, in lieu of fifteen hours of community service, the minimum fines and costs would be increased—instead of community service—to $1,083.

MULLAKANDOV: That's fine.

COURT: And so, I've got to tell you that, if you plead guilty to this, there's a great possibility that, and I'm sure Arizona is like Kentucky, a second's a lot greater than a first.

MULLAKANDOV: (nodding yes throughout) It is.

COURT: If you get a second charge, the fines and penalties are greater, the license suspension's greater, the jail time would be greater and your license will be suspended according to Arizona law, not Kentucky law. So, ma'am, with all of that said, how do you plead?

MULLAKANDOV: Guilty.

COURT: OK. And ma'am, how long will you need to uh pay $1,083 (asking clerk, "What would that be with court costs?")

CLERK:	$1,083.
COURT:	That's everything? $1,083 ma'am.
MULLAKANDOV:	I can pay as soon as I get back to the jail.
COURT:	OK. But let's, let's just go ahead and say we need you to pay this before uh February 12th.
MULLAKANDOV:	To you. OK.
COURT:	(motioning to side) Ma'am, Sign[4] right over here. Thank you.

There being no additional questions, objections or discussion, the trial court accepted and entered Mullakandov's guilty plea and sentenced her in conformity with the Commonwealth's offer.

Mullakandov returned to Arizona, telling family members and others of her experience in Kentucky. Some told her a guilty plea could not be undone; others told her it could be challenged. Two to three weeks after returning home, she hired an attorney who filed a succinct written motion to withdraw the guilty plea, maintaining Mullakandov's plea was unknowingly and involuntarily entered because she never affirmatively waived her right to a jury trial, to be represented by counsel, or to confront her accusers. The motion also alleged the plea did not

[4] The court appears to direct Mullakandov to a table in the courtroom where she signs the DUI (Guilty Plea) form. She would later claim she saw and signed only page 2 of the two-page form, without reading any of it.

satisfy *Boykin* because she was never told the consequences of pleading guilty without an attorney. The Commonwealth did not file a written response.

When the district court heard the motion on March 11, 2015, defense counsel argued Mullakandov was never offered appointed counsel and never waived the right to hire counsel. In contrast, the Commonwealth argued Mullakandov was given the opportunity to discuss with the court her options—including any desire to hire counsel—and chose not to do so, instead telling the judge she understood her rights, wanted to resolve the matter, and wanted to plead guilty.

Mullakandov testified during the hearing. She said an unidentified man had begun interviewing her and filling out a form at the jail. Before completing the form, the man told her she did not qualify for appointed counsel, and left. A few hours later, a female deputy jailer came to her cell, told her bond was $2,500, but even if she posted bond, she could not leave Logan County for two weeks.

She recalled the judge talking about many "legal" things she did not understand. She stated she was never asked whether she wanted to hire an attorney; never said she did not want to hire counsel; and, was never asked whether she waived the right to an attorney. She identified her signature on the DUI guilty plea form, saying she signed the form after pleading guilty and being told to sign at the bottom. She claimed she never saw the front side of the form, no lawyer ever

explained the form to her, and this charge was the first blemish on her record. She also testified she was never told the penalty for a DUI, first offense.

On cross-examination, the Commonwealth asked Mullakandov why she chose to rely on information from a deputy jailer rather than exploring her options with the judge during the colloquy. She responded she did not know she could discuss the matter with the court and figured the deputy had given her accurate information. She confirmed the court had told her entering a guilty plea would waive all the rights he had mentioned.

On redirect, defense counsel asked Mullakandov what she thought the judge meant when he asked, "did you understand the rights I read to you today?" She stated, "I understood some of it, but not all of it," because she did not know what a "Commonwealth" is. The court then asked Mullakandov whether she had ever seen her bond form,[5] to which she answered, "No."

At the close of the proof, defense counsel argued *Boykin* requires an affirmative waiver of the right to counsel, something missing from the record in this case. He asserted Mullakandov had appeared "somewhat confused" during the colloquy, was never told she could request time to secure private counsel, and lack of an attorney prevented her from appreciating her options and defenses. Counsel maintained the court should have personally ensured Mullakandov did not qualify for appointed counsel. The court interrupted counsel's argument to iterate

[5] The Conditions of Release and Judicial Decision form placed in the record lists the bond amount as "$2,500 CASH," and in the details section states, "IF BONDS OUT CAN NOT (sic) LEAVE LOGAN CO. UNTIL CASE IS DISPOSED OF."

Mullakandov had not been denied the right to counsel, but had only been denied a free attorney paid by the Commonwealth, and expressed his belief that *Boykin* does not require an explicit waiver of each constitutional right.

The prosecutor argued the court had sufficiently explained Mullakandov's rights to her during arraignment and that entering a guilty plea would waive all of those rights, which she unhesitatingly said she understood. The Commonwealth stated the court had corrected Mullakandov's mistaken notion that her only choice was to plead guilty or remain in jail. The prosecutor then noted Mullakandov had resources since she assured the court she could post $2,500 bond, and concluded from the entirety of the record the defendant understood her rights and chose to waive them.

At the conclusion of all arguments, the judge stated he had read the rights to all defendants at arraignment and had twice mentioned those rights were waived by entry of a guilty plea. He noted, when asked, Mullakandov said she understood her rights, the charge, the Commonwealth's offer, and that the sentence for a second DUI would be enhanced. When asked how she wanted to plead, without hesitation, she said, "Guilty." Citing *Grigsby v. Commonwealth,* 302 S.W.3d 52, 56 (Ky. 2010), the judge expressed his view that *Boykin* does not require a separate waiver of every right.[6] Noting the DUI charge was not complex, and the court's ruling did not turn on what a deputy jailer may have told

[6] Relying on *Commonwealth v. Martin*, 410 S.W.3d 119, 122 (Ky. 2013) (citing *Faretta*), another case dealing with trial counsel, Mullakandov suggests the trial court should have specifically found a waiver of the right to counsel. Like the other authority she cites, she fails to appreciate the vast difference in standing trial and pleading guilty.

Mullakandov, the court stated its decision was based on its own interaction with the accused and his view of her credibility in the courtroom during the colloquy. The court went on to explain its responsibility in a guilty plea colloquy:

> I don't have to take a tour, a subjective tour, of each and every defendant's mind to ascertain "do you really, really understand what the rights are and do you really know what you're waiving?" Because all that's required of the court to do is to tell a defendant what the rights are, and tell them what happens when their rights are waived."

The court then denied the motion to withdraw the plea, said a written order would be forthcoming, returned the defendant's check to counsel, and set a date to review the matter.

Mullakandov appealed to the Logan Circuit Court, essentially reiterating the arguments made to the district court. The Commonwealth filed a written response arguing entry of a guilty plea is not governed by *Faretta* which addresses requirements for an effective waiver of trial counsel. The Commonwealth urged the court to rely on *Tovar*, since it deals with a defendant contemplating a guilty plea. *Tovar* declined to extend *Faretta* to the guilty plea scenario, because "at earlier stages of the criminal process, a less searching or formal colloquy may suffice." *Tovar,* 541 U.S. at 89, 124 S.Ct. at 1388. The Commonwealth noted requiring a *Faretta* hearing on every guilty plea has never been required and would unnecessarily burden the judicial process.

Additionally, the Commonwealth argued RCr[7] 3.05(2) puts the burden on the accused to establish indigency before appointment of counsel may occur. Mullakandov made no such showing and her hiring of private counsel mere weeks after pleading guilty negated any argument she was entitled to appointed counsel. Further proof of her lack of indigency was her request for less than one month to pay $1,083 in fines and costs. The Commonwealth also cited KRS 31.120 which requires the accused to declare and demonstrate she is a "needy person" to secure appointed counsel. Again, no such showing was made. Stating Mullakandov had said multiple times she understood her rights and wanted to waive them, the Commonwealth argued the district court's findings were not clearly erroneous, the guilty plea was voluntarily entered, and the motion to withdraw the guilty plea was properly denied.

After a brief hearing and review of the recorded arraignment and colloquy, the circuit court issued an order affirming denial of the motion to withdraw. The circuit court held the record clearly showed the accused was apprised of all her constitutional rights and in pleading guilty,

> she subjectively acted under a mistaken belief, formed from conversations with an unidentified jail deputy and pre-trial officer, that she could not make bond and return home if she did not plead guilty. Even assuming she believed this, she still does not have the right to withdraw her guilty plea.

[7] Kentucky Rules of Criminal Procedure.

The circuit court went on to say the record did not support an allegation of indigency. According to the circuit court, Mullakandov was apprised of the right to an attorney, including appointed counsel if she could not afford to hire one; she never requested appointed counsel; and her ability to post $2,500 in bond and more than $1,000 in fines and costs, owning her own home, being employed, and flying commercially to attend a funeral, all belied any suggestion she was indigent. Mullakandov sought discretionary review in this Court, which we granted.

ANALYSIS

> Whether a guilty plea is voluntarily given is to be determined from the totality of the circumstances surrounding it. The trial court is in the best position to determine the totality of the circumstances surrounding a guilty plea. Once a criminal defendant has pleaded guilty, he may move the trial court to withdraw the guilty plea, pursuant to RCr 8.10. If the plea was involuntary, the motion to withdraw it must be granted. However, if it was voluntary, the trial court may, within its discretion, either grant or deny the motion. . . . The trial court's determination on whether the plea was voluntarily entered is reviewed under the clearly erroneous standard. A decision which is supported by substantial evidence is not clearly erroneous. If, however, the trial court determines that the guilty plea was entered voluntarily, then it may grant or deny the motion to withdraw the plea at its discretion. This decision is reviewed under the abuse of discretion standard. A trial court abuses its discretion when it renders a decision which is arbitrary, unreasonable, unfair, or unsupported by legal principles.

Rigdon v. Commonwealth, 144 S.W.3d 283, 287–88 (Ky. App. 2004) (footnotes omitted). In undertaking our analysis, we are mindful, "[s]olemn declarations in

open court carry a strong presumption of verity." *Blackledge v. Allison*, 431 U.S. 63, 74, 97 S. Ct. 1621, 1629, 52 L. Ed. 2d 136 (1977).

> A plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment. *See Kercheval v. United States*, 274 U.S. 220, 223, 47 S.Ct. 582, 583, 71 L.Ed. 1009. Admissibility of a confession must be based on a 'reliable determination on the voluntariness issue which satisfies the constitutional rights of the defendant.' *Jackson v. Denno*, 378 U.S. 368, 387, 84 S.Ct. 1774, 1786, 12 L.Ed.2d 908. The requirement that the prosecution spread on the record the prerequisites of a valid waiver is no constitutional innovation. In *Carnley v. Cochran*, 369 U.S. 506, 516, 82 S.Ct. 884, 890, 8 L.Ed.2d 70, we dealt with a problem of waiver of the right to counsel, a Sixth Amendment right. We held: 'Presuming waiver from a silent record is impermissible. The record must show, or there must be an allegation and evidence which show, that an accused was offered counsel but intelligently and understandingly rejected the offer. Anything less is not waiver.'

Boykin, 395 U.S. at 242, 89 S. Ct. at 1711–12. Here, the record was neither silent nor ambiguous. Mullakandov was told she had a right to an attorney. She was twice told pleading guilty would waive her right to an attorney as well as all other constitutional rights. She was also told she was charged with DUI, first offense, and the Commonwealth's offer. She never asked for a lawyer or time to weigh her options, saying she wanted to "resolve" the charge. As the court tried to explain the situation, Mullakandov talked over him. When asked how she wanted to plead, she quickly responded, "Guilty." In light of her immediate response in open court —a solemn declaration under *Blackledge*—the district court reasonably concluded

she voluntarily chose to plead guilty and waive her rights with full knowledge of what she was doing. She gave the court no reason to suspect otherwise.

Before entering the courtroom that morning, Mullakandov already knew something about counsel. According to her own testimony, the pre-trial officer had told her she did not qualify for an appointed attorney because of her job and the value of her home. If she disagreed with that conclusion, or did not understand its import, she should have explored her contrary belief with the judge. She did not—choosing instead to rely fully on her prior discussion with the pre-trial officer. Under KRS 31.120(2), the pre-trial release officer compiles financial information for the court's benefit; there is no provision for a hearing on whether an accused is a needy person absent the accused raising the issue of indigency. *Tinsley v. Commonwealth,* 185 S.W.3d 668, 672 (Ky. App. 2006). Curiously, to this day Mullakandov has never offered proof—or even hinted—she qualified for appointed counsel, if in fact she ever believed she did. We reject Mullakandov's theory that the district court had to personally ensure she did not qualify for appointed counsel. We also reject counsel's theory any assets Mullakandov had in Arizona had no bearing on her indigency in Kentucky at the time of her plea because she supposedly could not access them. As she testified, her husband offered to post bond on her behalf, but she told him not to bother—thus negating the premise of the argument. Counsel subsequently proffered testimony from Mullakandov's husband that he offered to post $2,500 bond for his wife so she could be released from jail—again, an indication she was not a needy person.

Counsel suggests the district court should have *sua sponte* appointed counsel for Mullakandov so she could make an intelligent decision about pleading guilty. Doing so would have contravened RCr 3.05(2) which places the onus on the accused to establish indigency *before* counsel is appointed. See *Tinsley,* 185 S.W.3d at 675. We reject this suggestion.

If Mullakandov wondered when and how she could hire her own attorney, she should have discussed that matter with the trial court, but again she chose not to do so. The judge was not required to read her mind to determine whether she wanted to hire an attorney or needed time to do so. He told her she had a right to an attorney, that pleading guilty waived that right, and then asked how she wanted to plead. Without hesitation, she answered, "Guilty"—a reasonable response. From all appearances, she was confident in her stated decision.

The trial court demonstrated a willingness to discuss options with Mullakandov and correct erroneous beliefs. When she stated she understood the Commonwealth's offer to be "if I pay $1083.00 I can go home," he replied, "It's not pay or go home; it's not that at all . . . the bottom line is whether you're guilty or not and . . . we only want you to resolve it if, if, if you're guilty, OK." The district court was "in the best position to determine if there was any reluctance, misunderstanding, involuntariness, or incompetence to plead guilty[,]" *Bronk v. Commonwealth*, 58 S.W.3d 482, 487 (Ky. 2001) (footnotes omitted), and clearly sensed none.

Since we are not addressing a trial situation, we agree with the Commonwealth. *Tovar,* not *Faretta*, governs this case.

Faretta recognized a criminal defendant is entitled to represent himself at trial, but before doing so "should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is made with eyes open.'" *Faretta,* 422 U.S. at 836, 95 S.Ct. at 2541 (internal citation omitted). Well before trial, Faretta had rejected counsel and made his desire known to the trial court, but the court appointed counsel and forced Faretta to use counsel at trial. In vacating and remanding the conviction, the United States Supreme Court held forcing Faretta to accept counsel "deprived him of his constitutional right to conduct his own defense." *Id.* Mullakandov's citation to *Hill v. Commonwealth,* 125 S.W.3d 221 (Ky. 2004), *holding modified by Depp v. Commonwealth*, 278 S.W.3d 615 (Ky. 2009), is also for naught because it pertains to waiver of trial counsel.

In contrast, *Tovar* applies specifically to the warning a trial court must convey to an accused before accepting a *pro se* guilty plea. *Tovar* highlights important distinctions in standing trial without an attorney and pleading guilty without an attorney.

Tovar was charged with drunk driving in Iowa. To ensure waiver of his Sixth Amendment right to assistance of counsel was knowing and intelligent, the Iowa Supreme Court required the court considering Tovar's guilty plea to first advise him acting without counsel could result in (1) a viable defense being

overlooked, and 2) choosing to plead guilty even though doing so was a factually and legally unwise decision. Without specifying a script that must be followed, the United States Supreme Court noted an intelligent waiver "will depend on a range of case-specific factors, including the defendant's education or sophistication, the complex or easily grasped nature of the charge, and the stage of the proceeding." *Tovar,* 541 U.S. at 88, 124 S.Ct. at 1387 (citing *Johnson v. Zerbst,* 304 U.S. 458, 464, 58 S.Ct. 1019, 1023, 82 L.Ed.2d 1461 (1938)). In rejecting the two warnings required by Iowa, the United States Supreme Court held states may adopt any guidelines they deem helpful and reiterated,

> "[T]he law ordinarily considers a waiver knowing, intelligent, and sufficiently aware if the defendant fully understands the nature of the right and how it would likely apply *in general* in the circumstances—even though the defendant may not know the *specific detailed* consequences of invoking it." *United States v. Ruiz,* 536 U.S. 622, 629, 122 S.Ct. 2450, 153 L.Ed.2d 586 (2002) (emphasis in original). We similarly observed in *Patterson* [*v. Illinois*, 487 U.S. 285, 108 S.Ct. 2389, 101 L.Ed.2d 261 (1988)]: "If [the defendant] . . . lacked a full and complete appreciation of all of the consequences flowing from his waiver, it does not defeat the State's showing that the information it provided to him satisfied the constitutional minimum." 487 U.S., at 294, 108 S.Ct. 2389 (internal quotation marks omitted).

Tovar, 541 U.S. at 92, 124 S. Ct. at 1389–90.

Applying *Tovar* to the case at bar, both Tovar and Mullakandov were charged with DUI. Neither "'articulate[d] with precision' the additional information counsel could have provided, given the simplicity of the charge." *Tovar,* 541 U.S. at 93, 124 S. Ct. at 1390. Mullakandov was told she had a right to

counsel and twice that by pleading guilty she waived that right as well as all other constitutional rights—a fact she told the district court she understood. She was also told she was charged with DUI, first; that a second DUI conviction would carry enhanced penalties; and the Commonwealth's offer. Even if Mullakandov did not fully and completely appreciate the consequences of pleading guilty, she was told her rights and that pleading guilty waived those rights. There is no requirement she

> be informed of every possible consequence and aspect of the guilty plea. A guilty plea that is brought about by a person's own free will is not less valid because he did not know all possible consequences of the plea and all possible alternative courses of action. To require such would lead to the absurd result that a person pleading guilty would need a course in criminal law and penology.

Turner v. Commonwealth, 647 S.W.2d 500, 500–01 (Ky. App. 1982).

Under the totality of the circumstances, as established by substantial evidence, the district court did not err in finding the guilty plea was voluntarily, knowingly and intelligently entered. *Rigdon,* 144 S.W.3d at 287–88. Having found the plea to have been voluntarily entered, the district court had discretion to grant Mullakandov's motion to withdraw her plea under RCr 8.10, but chose to deny the motion based on substantial proof. On appeal, for similar reasons, the circuit court discerned no abuse of discretion. Nor do we.

For the reasons expressed above, we affirm the opinion of the Logan Circuit Court.

ALL CONCUR.

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