NO.

IN THE SUPREME COURT OF THE UNITED STATES

December Term, 2023

ZACHARY MINIX,

Petitioner,

v.

COMMONWEALTH OF KENTUCKY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF KENTUCKY

Commonwealth of Kentucky Supreme Court.: 2022-SC-0330-MR

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QUESTIONS PRESENTED

Petitioner, Zachariah M. Minix (Minix), appeals as a matter of right from an Adair County Circuit Court Judgment and Sentence on Plea of Guilty that imposed an aggregate sentence of twenty-five (25) years for the offenses of Kidnapping – Minor, unlawful Transaction with a Minor in the Second Degree, Rape in the Second Degree, Possess/View Matter Portraying Sexual Performance by Minor, and Possession of Marijuana. The trial court's entry of Judgment followed its denial of Minix's Motion to Withdraw his pleas of guilty and denying him a hearing on the Motion, which Minix contends was a violation of his Due Process Rights and abuse of the trial court's discretion under Kentucky Rule of Criminal Procedure ("RCr") 8.10.

I.

Were the Petitioner's federal due process rights under the Fifth Amendment of the United States Constitution, as made applicable to the States by the Fourteenth Amendment to the United States Constitution, violated when the Petitioner's request to withdraw his plea of guilty and proceed to trial was denied by the Adair County Circuit Court and affirmed by the Supreme Court of Kentucky?

II.

Were the Petitioner's federal due process rights under the Fifth Amendment of the United States Constitution, as applied to the States via the

Fourteenth Amendment of the United States Constitution, violated when the Adair County Circuit Court and Supreme Court of Kentucky abused its discretion, and refused to permit Zachariah Minix to have a hearing on his motion to withdraw plea?

III.

Were the Petitioner's right against cruel and unusual punishment under the Eighth Amendment of the United States Constitution violated due to the confinement conditions of the Adair County jail?

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November Term, 2023

ZACHARIAH MINIX,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent,

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF KENTUCKY

INTRODUCTION

Your Petitioner was convicted Circuit Court for Adair County, Kentucky on one count of Kidnapping of a minor a class B felony, one count of unlawful interaction with a minor a class D felony, one count of rape in the second-degree a class C felony, one count

of possession or viewing of matter that portray a sexual performance by a minor a class D felony, and one count of possession of marijuana a class B misdemeanor; and was sentenced to 25 years incarceration. The Petition of Zachariah Minix respectfully prays that a writ of certiorari issue to review the judgement and opinion of the Adair County Circuit Court and the Kentucky Supreme Court.

OPINIONS BELOW

(1) Judgement, Commonwealth of Kentucky v. Zachariah Minix, No. 20-CR-00165, Adair County Circuit Court, Kentucky, July 11, 2022.
(2) Opinion, Commonwealth of Kentucky v. Zachariah Minix, No. 20-CR-00165, Supreme Court of Kentucky, August 24, 2022

JURISDICTION

The judgment of the Supreme Court of Kentucky was rendered, August 24, 2023, affirming the Petitioner's convictions in the Adair County Circuit Court, Kentucky for Kidnapping of a minor, Unlawful interaction with a minor, Rape in the second-degree, Possession or viewing of matter that portrays a sexual performance by a minor, and possession of marijuana.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a) and United States Supreme Court Rules 10 and 13.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides as follows:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Eighth Amendment to the United States Constitution provides as follows:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

STATEMENT OF THE CASE

Introduction

The issues for which your petitioner requests review by this Court related to the constitutionality, pursuant to the Fifth Amendment to the United States Constitution as made applicable to the States by the Fourteenth Amendment to the United States

Constitution, of the circumstances under which of the Adair County Circuit Court Judgement and Sentence on a Plea of Guilty. The trial court's entry of judgment followed its denial of Minix's Motion to Withdraw his pleas of guilty and denying him a hearing on the Motion.

Additionally, your petitioner requests review by this Court related to the constitutionality, pursuant to the Eighth Amendment to the United States Constitution, of the circumstances under which the petitioner was subject to cruel and unusual punishment during his confinement in the Adair County jail.

The Petitioner appealed the trial court's decisions to the Supreme Court of Kentucky; and they affirmed the lower court's decision on August 24th, 2023. Wherefore, the Petitioner respectfully asks this honorable Court to grant writ of certiorari.

Relevant Facts

A.

The Petitioner was indicted on an aggregate sentence of twenty-five (25) years for the offenses of Kidnapping, - Minor, Unlawful Transaction with a Minor in the Second Degree, Rape in the Second Degree, Possess/View Matter Portraying Sexual Performance by Minor, and Possession of Marijuana.

B.

The relevant facts related to the issue presented in this Application are as follows:

Zachariah Minix is a 23-year-old male that is approximately 5 feet 6 inches and 120 pounds. He is a lifelong resident of Tennessee and has no prior criminal history. When he was charged with these crimes, he was only 21 years old. Minix was diagnosed with type 1 diabetes and is classified as a brittle diabetic. Brittle diabetes is a diabetic condition that is especially difficult to manage that can cause severe swings in blood glucose with frequent episodes of hypoglycemia or hyperglycemia if not treated appropriately. Irl B. Hirsch, M.D. & Linda M. Gaudiani, *A New Look at Brittle Diabetes*, NATIONAL LIBRARY OF MEDICINE, June 2, 2020, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7266594/ (last visited October 21, 2022). Minix also suffers from depression, anxiety, and post-traumatic stress disorder. Brittle diabetes is often associated with stress, depression, and other psychological issues that can lead to acute and temporary insulin resistance. *Id*. With Minix's condition it is extremely dangerous to not receive the appropriate medical treatment.

On November 24, 2020, Minix went in front of Judge Murphy for his arraignment in criminal court on the following charges: Kidnapping – Minor, KRS 509.040, a Class B Felony; Unlawful Transaction with a Minor in the First Degree/Illegal Sex Act/ Victim Under 16 Years of Age, KRS 530.064(1)(a), a Class B Felony; Rape in the First Degree, KRS 510.040, a Class B Felony; Possess/ View Matter Portraying Sexual Performance by a Minor, KRS 531.335, a Class D Felonly; and Possession of Marijuana, KRS 218A.1422, a Class B Misdemeanor. Minix is represented by Attorney Luke Lawless, and he addressed a possible reduction in Minix's bond that was set at $150,000 cash bond. Judge Murphy

ultimately denied Lawless's motion to reduce Minix's bond and sets a pretrial date on January 12, 2021. Arraignment, Nov. 24, 2020, (2020-11-24_14.32.00.94.wmv).

On January 12, 2021, Lawless discussed with the court that they had begun to receive discovery from the State Attorney Brian Wright (Wright). Also, Lawless addressed Minix's bond again on a possible reduction in which the court denied again and set another pretrial date on March 9, 2021. Pretrial Date, Jan. 12, 2021, (2021-01-12_09.42.43.842.wmv).

On March 9, 2021, the State informed the court that the Federal Bureau of Investigation was attempting to build a case against Minix, but at that time had decided that they were no longer going to pursue the matter. As a result of this Investigation, more discovery was obtained by the State from the Commerce City, Colorado Police Department, and the Colorado Federal Bureau of Investigation. Another pretrial date was set for March 23, 2021, for the State to go through and make copies to of the newly obtained to discovery to get to the Defendant and his attorney. Pretrial, March 9, 2021, (2021-03-09_09.46.27.115.wmv).

On March 23, 2021, Lawless informed the court that an offer was received last week, and he had received supplemental discovery that he still needed to over with Minix. Lawless also addressed the matter of Minix's bond again. Lawless had obtained medical records of Minix prior to his incarceration and provided them to State that made them aware that Minix had been diagnosed as brittle diabetic. Minix, at the time before his incarceration was covered by state medical insurance in Tennessee that covers the

cost of the specific type of insulin Minix needs. Due to Minix's incarceration, his mother informed Lawless that she received a letter in the mail stating that Minix's coverage was going to be cancelled at the end of the month. Lawless contacted the jail, and their response was that they had insulin that they could provide but it would not be the specific kind needed for a brittle diabetic. Lawless made the court aware that the insulin that Minix needs would cost in excess of $1,000 without insurance and asked for some sort of reduction due to the medical concern of switching his insulin, which he has had issues with in the past. The State responded in opposition that from what he had gathered from the records was that Minix was diabetic and needed insulin which could be provided at the jail. The Judge Murphy stated "due to the nature of the offenses, he is charged with and the seriousness and the fact that he is not local I am going to have to deny his request. I sympathize with the predicament he is in and I'm not passing judgement…sometimes the choices we make land us where we are." Pretrial, March 23, 2021, (2021-03-23_10.58.38.485.wmv).

On May 11, 2021, the next pretrial date, there were issues of missing discovery from the Commerce City Police Department that had not been received by Minix's Attorney. Lawless stated that he needed more time to finish going through discovery and make sure he has received and seen everything before he goes and speaks with his client to go over everything for a counteroffer. Judge Murphy set another pretrial date for June 15, 2021. Pretrial, May 11, 2021, (2021-05-11_10.27.13.958.wmv).

On June 15, 2021, the case was set for another pretrial date instead of trial due to many out of state witnesses. Pretrial, June 15, 2021, (2021-06-15_12.36.42.353.wmv).

On August 24, 2021, Lawless informed the court that he had subpoenaed records from the jail regarding Minix's medical condition showing his glucose levels going crazy and that the insulin provided in the jail was not sufficient in treating Minix's brittle diabetic condition. There were several hundred pages, and the State Attorney Wright was given a copy that day. Lawless asked the court to place the case on the next pretrial date to take in up with the court. Pretrial, Aug. 24, 2021, (2021-08-24_10.33.51.782.wmv).

On September 14, 2021, Lawless addressed Minix's bond again and in reference to the jail records obtained. Lawless had previously disclosed to the court that Minix was a severe diabetic and the insulin he had received in the jail was not sufficient to his particular diabetic condition. He is still unable to get the specific insulin he needs due to the extreme cost and the loss of his state medical insurance due to his incarceration. The main concerns are that from July 24, 2021, through August 11, 2021, Minix's blood sugar got below 60 on 10 different occasions with his lowest being 28. Lawless informed that court that anything under 60 can be extremely dangerous resulting in unconsciousness or coma. During that same time, Minix's blood sugar level went over 300 on eight 8 separate occasions with the highest being 468, and Lawless pointed out again to the court that anytime it is above three hundred (300) there is a risk of unconsciousness and coma as well. Besides the

considerable risk to Minix's health that this causes it also causes him to feel extremely unwell. Lawless asked the court, for the safety and health of Minix if the court would lower his bond to $50,000 which should be sufficient to ensure that Minix would be there for his future court dates and that Minix is willing to do anything else that the court puts in place and Lawless maintains constant communication with the Minix family. Wright opposed any modification and after reviewing the blood sugars on the records, he would determine a majority of them are in the normal range and found it hard to understand and to blame the medication. Wright further states that he days that are in the correct range to me means that the medicine is working. Lawless further explained that the normal levels are due to multiple insulin shots and glucose tablets to try and keep him stable if Minix was consistently super high or super low it could be extremely dangerous and could potentially be deadly. Ultimately, Judge Murphy determined that due to the seriousness of the case, she could not make a change to the bond at that time. Pretrial, Sept. 14, 2021, (2021-09-14_11.25.47.628.wmv).

On September 28, 2021, Lawless brought up a note that the alleged victim had written that was referenced in one of the videos provided by the Commerce City Police Department that showed a note in the officer's hand that appeared to be written by the alleged victim to her parents which is necessary for the defense to have as it would shed some more light on the case. Pretrial, Sept. 28, 2021, (2021-09-28_10.15.47.307.wmv).

On October 12, 2021, both the state and the defense have had extensive discovery including videos

and messages that there was a concern that there is not enough time to prepare this case for trial in November 2021 and request the court for a continuance. Pretrial, Oct. 12, 2021, (2021-10-12_11.45.18.468.wmv).

On December 14, 2021, Judge Murphy set the final pretrial date for January 25, 2022. Pretrial, Dec. 14, 2021, (2021-12-14_11.24.08.321.wmv).

On January 25, 2022, a new offer had been discussed between the parties and Minix is interested but is hesitant due to the requirements required under the agreement. He had concerns about the sex offender treatment programs, wait times with covid, and his ability to get involved in these programs and enrolled and transferred. Lawless claimed he had reached but it has taken some time to get calls back with answers to these questions and requested a few days for Minix to give a final answer. Pretrial, Jan. 25, 2022, (2022-01-25_10.48.05.207.wmv).

On January 28, 2022, Lawless explained to the court that after speaking with Minix and his parents everyone has different views on how to resolve the case and that Minix has not made a final decision at that time of what he was wanting to do. Due to Minix needing more time the defense requested a continuance which Judge Murphy granted and set a final plea date for March 29, 2022. Pretrial, Jan. 28, 2022, (2022-01-28_10.49.07.660.wmv).

On March 29, 2022, Lawless presented to the court on behalf of Minix his Motion to Enter a Guilty Plea and the Commonwealths Offer to Plea Guilty. Judge Murphy read over all of Minix rights and asked him if he understood that he was pleading guilty to a plea agreement for a total of twenty-five (25) years

and by pleading guilty he is waiving all those rights. Minix then pled guilty to each count as presented in the plea agreement. Minix was put on pretrial release where he would be able to go home and get the medication he needed until his sentencing date on May 11, 2022. Plea, March 29, 2022, (2022-03-12.20.56.375.wmv).

On June 28, 2022, the court reconvened on Minix's case to discuss his sentencing. Attorney Scott Lanzon presented himself to the court as joining Attorney Luke Lawless as co-counsel for Minix. A Motion to Withdraw Minix's Guilty Plea and to Set for Hearing was filed with the court but was not found in the court file. Wright objected to the motion to withdraw the plea and stated that there are no grounds in which to withdraw the plea in this case. Judge Murphy explained the motion to was unable to be located in the file for her to determine the grounds for the Withdraw of a Guilty Plea. Lawless made clear that after looking at the PSI and talking it over with Mr. Minix and Mr. Lanzon, Mr. Minix wants to try the case because he is not going to able to make admissions of guilt as required by sex offender treatment program. The sex offender treatment that Minix would have to complete would require him to make admissions as to his guilt that he would not be able to do resulting in him never being able to complete the treatment and requirements that he is supposed to do to be eligible for parole. At that point, the only option is to try this case, and Attorney Scott Lanzon was retained to come in and try the case on behalf of Minix. The state attorney opposed the motion stating that it "sound[ed] to [him] like buyers' remorse" and stated that him and Mr. Lawless had gone over all the terms of the agreement fully and

discussed at length and that everyone was in full agreement and understanding. The State opposed any motion to withdraw the plea as Minix did the plea colloquy with the court and claimed he understood nature of the charges and plea. The defense understood Minix agreed that he would go into the sex offender treatment before the court as part of the agreement, but the issue is that he is not going to admit to things that he did not do in this treatment and would not be able to progress or move forward within the treatment program. Lawless spent a lot of time on the phone with parole and sex offender programs to get more specific answers to questions and that part maybe came in too late and the information was found out that if he is not going to admit to the things in the PSI and allegations made within the indictment, he would not be able to move forward in the program. Lanzon indicated that the issue is that it is not just a one or two year sentence that Minix is facing it is he is facing twenty-five years and when taking his plea he had been incarcerated for 627 days and was subjected to the conditions of the jail. At that point Minix just wanted to out of jail. Judge Murphy denied Defendant's Motion to Withdraw a Guilty Plea and moved forward with the sentencing. Sentencing, June 28, 2022, (2022-06-28_10.25.45.582.wmv).

The PSI report was presented to the court and needed to be updated with the credit that was not entered due to the sentencing hearing being moved from May 11, 2022, to June 28, 2022, because Minix was unable to get with his doctor on the insulin. Lawless also reiterated to the court to be put on the record again that there were certain aspects of the plea that came together at the very end regarding

parole eligibility and how it would work. He specifically remembered going through last minute details about what this plea would mean to Minix in his holding cell on the day of his plea deadline, and they had to make a decision right then. Lawless thought at the time that when he was speaking of parole eligibility, he thought Minix's had an understanding of what that meant, but he was under the impression that was automatic. Just because you are eligible does not mean you are going to receive it, and that is what Minix was relying on in accepting the plea agreement. Lawless even made the following statement on the record, "I hate the situation we are in, and I just want to put that on the record because I don't feel like after speaking with Zack again and going through the paperwork with him, I don't think he fully understood what that parole eligibility meant for him, and I would like the court to hear the motion to withdraw the plea and I know the court has already ruled on that but I want to put it on the record that we maintain that we would like to withdraw the plea and move the case on for trial." The State maintained that the disposition is fair and in light of the facts of the case that it is a fair offer in light of what he is facing. The state further stated that as far as Minix understanding, he has admitted to the court and the evaluator that he committed these crimes, and he is amenable to treatment and not guaranteed parole at any time. Sentencing, June 28, 2022, (2022-06-28_12.35.50.661.wmv).

Judge Murphy continued with sentencing on the case, and he was sentenced to 15 years on count one Kidnapping of a minor a class B felony, 5 years on count two amended unlawful interaction with a minor a class D felony, 10 years on count three amended

rape in the second-degree a class C felony, 5 years on count four possession or viewing of matter that portrays a sexual performance by a minor a class D felony, and 30 days on count five possession of marijuana a class B misdemeanor. Counts two through five are to run concurrent but run consecutive to that of count one for a total of 25 years with credit for time already served and deemed a sex offender and court costs waived due to the length of incarceration. Additionally, Minix would be eligible for parole after serving 2 years. Minix would receive credit for the nearly 2 years he was already incarcerated. Sentencing, June 28, 2022, (2022-06-28_12.35.50.661.wmv).

C.

In the appeal to the Supreme Court of Kentucky, your Petitioner's attorney raised, inter alia, the violation of your Petitioner's due process rights as well as trial court's abuse of discretion in failing to hold an evidentiary hearing stating in the appeal as follows:

> A. The Adair County Circuit Court erred when it refused to permit Zachariah Minix to have a hearing on his motion to withdraw his plea.
>
> a. Under Kentucky Rule of Criminal Procedure 8.10, Defendant is required to have a hearing on a Motion to Withdraw a Plea
>
> B. The Adair County Circuit Court abused its discretion when it refused to permit Zachariah Minix to withdraw his plea of guilty and proceed to trial.

a. Under Kentucky Rule of Criminal Procedure 8.10, a Motion to Withdraw a Plea should be granted if the plea is not made knowingly or voluntarily.

i. Defendant did not knowingly or voluntarily plea due to his lack of understanding of the full plea agreement.

ii. Defendant did not voluntarily plea due to inhumane living conditions and lack of medical care in the jail.

Subsequently the Petitioner's appeal to the Supreme Court of Kentucky

affirmed the lower court's judgments.

D.

Your Petitioner now seeks review by the United States Supreme Court to resolve important questions of State and constitutional law. First, the petitioner's federal due process rights under the Fifth Amendment of the United States Constitution, as made applicable to the States by the Fourteenth Amendment to the United States Constitution, were violated when the Petitioner's request to withdraw his plea of guilty and proceed to trial was denied by the Adair County Circuit Court and affirmed by the Supreme Court of Kentucky. Second, the Petitioner's federal due process rights under the Fifth Amendment of the United States Constitution, as applied to the States via the Fourteenth Amendment of the United States Constitution, were violated when the Adair County Circuit Court and Supreme Court of Kentucky abused its discretion, and refused to Permit

Zachariah Minix to have a hearing on his motion to withdraw his plea.

REASONS FOR GRANTING THE WRIT

I. THE ADAIR COUNTY CIRCUIT COURT AND SUPREME COURT OF KENTUCKY ABUSED ITS DISCRETION WHEN IT REFUSED TO PERMIT ZACHARIAH MINIX TO WITHDRAW HIS PLEA OF GUILTY AND PROCEED TO TRIAL.

The preservation of an individual's due process rights is integral to the proper and fair functioning of the United States judicial system and that right should not be infringed. The Fourteenth Amendment provides that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law." In order to prevail on a Fourteenth Amendment procedural due process claim, a party must establish (1) that he enjoyed a protected liberty or property interest within the means of the Due Process Clause, and (2) that he was denied the process due him under the circumstances. *Marksberry v. Chandler*, 126 S.W.3d 747, 749 (Ky. App. 2004) . Constitutionally protected liberty interests may flow from either the Federal Constitution or the constitution of a state, or more specifically, from the Due Process Clause itself, or may be created by state law, rules, or regulations. *Wilkinson v. Austin*, 545 U.S. 209, 125 S. Ct. 2384,

162 L. Ed. 2d 174 (2005); *Fifield v. Eaton*, 669 F. Supp. 2d 294 (W.D. N.Y. 2009).

Entry into a guilty plea invokes a strong liberty interest because it requires the petitioner to relieve himself of his procedural due process liberty interest as he is facing deprivation of liberty by being subjected to incarceration. Here, the petitioner was denied a liberty interest by the Adair County Courts refusal to permit the Petitioner to withdraw his plea of guilty and proceed to trial; and the subsequent affirming judgment Supreme Court of Kentucky.

Due process requires a trial court to make an affirmative showing, on the record, that a guilty plea is voluntary and intelligent before it may be accepted. *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 1711, 23 L.Ed.2d 274 (1969). The purpose of the requirement is to make sure the defendant has a full understanding of what the plea connotes and of its consequences, including the constitutional rights that are waived by a guilty plea. *Id*. Evaluating the totality of the circumstances surrounding the guilty plea is an inherently factual inquiry which requires consideration of "the accused's demeanor, background and experience, and whether the records reveals that the plea was voluntarily made." Solemn declarations in open court carry a strong presumption of verity," "The validity of a guilty plea is not determined by reference to some magic incantation recited at the time it is taken. *Bronk v. Commonwealth*, 58 S.W.3d 482, 486-87 (Ky.2001).

Minix and his attorneys presented to the court a timely motion to withdraw a guilty plea based on Minix not being able to make a voluntary plea on March 29, 2022, based upon the fact he did not

understand and was not fully aware of the consequences of the plea. Minix did go through his plea colloquy and did plead guilty to the charges within the agreement but taking in the totality of the circumstances that Minix had been subjected to in the jail for an extensive amount of time and the lack of full understanding of certain aspects of the plea puts into question whether or not he made his plea voluntarily or intelligently.

A. Under Kentucky Rule of Criminal Procedure 8.10, and The Due Process Clause, a Motion to Withdraw a Plea should be granted if the plea is not made knowingly or voluntarily.

To comply with due process, those entering guilty pleas must be able to receive "advice by competent counsel" and have the benefit of "other procedural safeguards." *Bordenkircher v. Hayes*, 434 U.S. 357, 363 (1978). Procedural safeguards include an affirmative showing, on the record, that a guilty plea is voluntary and intelligent before it may be accepted. A guilty plea is involuntary if the defendant lacked full awareness of the direct consequences of the plea or relied on a misrepresentation by the commonwealth or the trial court. *Bronk v. Commonwealth*, 58 S.W.3d 482, 486-87 (Ky. 2001); *Brady v. United States*, 397 U.S. 742, 749, 90 S.Ct. 1463, 1469, 25 L.Ed.2d 747. A guilty plea is intelligent if a defendant is advised by competent counsel regarding the consequences of entering a guilty plea, including the constitutional rights that are waived thereby, is informed of the nature of the charge against him, and is competent at the time the plea is

entered. *Id*. at 566**.** The full range of penalties for the charge to which a defendant pleads guilty is a "direct consequence" of the plea of which a defendant must be aware. *Id*. at 566.

1. Parole Eligibility is a direct consequence of the entry of a guilty plea.

In the petitioner's case, numerous issues arose on the day of sentencing, in regards to the petitioner entering into the plea voluntarily and knowingly. It was brought to the court's attention that Minix had not fully understood that the sex offender treatment program would require him to admit his guilt in order to move forward with the program. He also did not understand that his progression in the program would determine whether he would be able to be eligible for parole and his understanding was that parole would be automatic. A plea is involuntary if the defendant lacked full awareness of the direct consequences of the plea and the full range of penalties for the charge to which Minix did not have full awareness of when he entered his plea on March 29, 2022.

Precedents set forth by both the CommonWealth of Kentucky and Sixth Circuit have consistently found that parole eligibility consistently is deemed an "indirect" or "collateral" consequence of a plea, rather than a direct consequence. However, we ask this to enter a similar finding in regard to parole eligibility as this honorable Court did in *Padilla*. *Commonwealth v. Padilla*, 253 S.W. 3d 482 (Ky. 2008). (Rejecting the collateral versus direct distinction as it related to the deportation

consequences of a guilty plea). The Court in *Padilla* reasoned that "such a severe penalty should not be categorically removed from counsel's constitutional duty to advise by simply dubbing it a collateral consequence.

Similarly, disclosure of parole eligibility cannot be dubbed a mere collateral consequence. At the trial court level, the disclosure by counsel of parole eligibility plays an astronomical role in the decision by defendants to enter into a plea deal. Pleas account for an overwhelming majority of closed cases and are oftentimes mutually beneficial to Defendant and State. The entry of a guilty plea requires a defendant to give up their constitutionally guaranteed liberty interest. In doing so, the defendant places himself at the mercy of the Court and at the risk of incarceration. Whether parole eligibility occurs at thirty or eighty-five percent of a sentence, it is still a United States Citizen's liberty interest at stake. To not consider parole eligibility as a direct consequence of a plea of guilty is a grave miscarriage of justice. Respectfully, we ask this Court to enter a judgment with due consideration of the Petitioner's liberty interest at stake.

2. Defendant did not knowingly or voluntarily plea due to his lack of understanding of the full plea agreement.

In this case taking in the totality of the circumstances surrounding Minix's plea and the ultimate fact that he did not fully understand that his parole eligibility was not automatic and that the sex

offender treatment program would require him to make admissions of guilt. His plea was anything but voluntary and intelligent. Minix had maintained his complete innocence up until his plea colloquy that he made without a full understanding of certain significant aspects of the plea agreement. The requirement for sex offender treatment program that Minix would have to complete would require him to make admissions as to his guilt that he would not be able to do resulting in him never being able to complete the treatment and requirements that would result in his ultimate eligibility for parole.

Lawless reiterated to the court during the sentencing to be put on the record again that there were certain aspects of the plea that came together at the very end regarding parole eligibility and how it would work. He specifically remembered going through last minute details about what this plea would mean to Minix in his holding cell on the day of his plea deadline, and they had to make a decision right then. The pressure of the deadline that Minix had to meet for his agreement coupled with the lack of understanding of many other aspects of the plea agreement made his plea involuntary. Minix induced to believe that at the time of his plea he would be released and that at his sentencing he would be parole eligible as he had already served 627 days. It was not made clear to Minix on the day he did his plea colloquy that he would have to go back to jail at all, and he was not made aware that he would not be eligible until he completed the sex offender treatment programs that he would not be able to successfully complete because he is not going to admit guilt on crimes he did not commit. Overall, there were multiple issues when viewing the totality of the circumstances surrounding

Minix's plea. Therefore, the Trial Court and Supreme Court of Kentucky abused its discretion in finding that his plea was voluntary and denying Minix's motion to withdraw his plea.

II. The Adair County Circuit Court and Supreme Court of Kentucky abused its discretion when it refused to permit Zachariah Minix to have a hearing on his motion to withdraw his plea.

Kentucky Rules of Criminal Procedure covers the procedure for a defendant to
withdraw a plea and states the following:

> At any time before judgment the court may permit the plea of guilty or guilty but mentally ill, to be withdrawn and a plea of not guilty substituted.
>
> If the court rejects the plea agreement, the court shall, on the record, inform the parties of this fact, advise the defendant personally in open court or, on a showing of good cause in camera, that the court is not bound by the plea agreement, afford the defendant the opportunity to then withdraw the plea, and advise the defendant that if the defendant persists in that guilty plea the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.
>
> The court can defer accepting or rejecting the plea agreement until there has been an opportunity to consider the presentence report. RCr 8.10. The word "may" in RCr 8.10 does not give a trial judge unfettered discretion to deny a motion to withdraw a

guilty plea without affording the defendant a hearing on the motion. *Rodriguez*, 87 S.W.3d 10 (Ky.2002).

The Petitioner acknowledges that he is not entitled to an evidentiary hearing on a motion to withdraw a plea of guilty as a matter of right and that it is within the discretion of the Court. *Rodriguez v. Commonwealth*, 87 S.W.3d 8 (Ky. 2002); *United States v. Woods*, 554 F.3d 611 (6th Cir. 2009). However, the word "may" in RCr 8.10 does not give a trial judge unfettered discretion to deny a motion to withdraw a guilty plea without affording the defendant a hearing on the motion. *Rodriguez*, 87 S.W.3d 10 (Ky.2002). The Defendant respectfully submits that the trial court and Supreme Court of Kentucky abused its discretion in denying the request for a hearing.

The decisions in *Rigdon* and *Rodriquez* clearly recognize that the trial court is in the best position to judge the voluntariness of a guilty plea and retains discretion whether or not to set aside a voluntary guilty plea, that discretion must be grounded in knowledge of what transpired between client and attorney, which knowledge must be ascertained by means of an evidentiary hearing. *Rodriguez*, 87 S.W.3d 8 (Ky. 2002); *Rigdon v. Commonwealth*, 144 S.W.3d 283 (Ky. App. 2004).

In *Rodriguez*, the Court of Appeals reversed the Christian Circuit Court's decision and remanded the case with directions to hold an evidentiary hearing on the Appellant's Motion to Withdraw; to make a determination based on the "totality of the circumstances" whether Appellant's guilty plea was voluntary or involuntary which. *Rodriguez*, 87 S.W.3d 12 (Ky.2002).

In the present case a motion to withdraw a guilty plea was brought before the court on June 28, 2022, before Defendant Zachariah Minix Sentencing in front of Judge Murphy in Adair County Criminal Court. After the court was unable to locate the filed motion in the case file, it was brought up on oral argument by Minix's attorneys Luck Lawless and Scott Lanzon. Judge Murphy ultimately denied the motion and moved on to the sentencing of the defendant. As the Judge has the discretion to determine whether or not to set aside a voluntary guilty plea, that discretion must be ascertained through an evidentiary hearing.

There is no way for the determination to be made without a behind the scenes look at the communication between the defendant and his attorney. In this case, the Trial Court did allow for an oral motion to withdraw a guilty plea, but ultimately abused its discretion by not allowing for an evidentiary hearing on the issue to determine whether the plea was made voluntarily.

Similarly, in *Rodriguez v. Commonwealth* the Court of Appeals reversed and remanded the Trial Court's decision with specific directions to hold an evidentiary hearing to make sure that the determination of the voluntariness or involuntariness of the plea was done taking the totality of the circumstances. The reverse and remanding of the Rodriguez case highlights the importance of an evidentiary hearing procedurally in determining voluntariness and to make sure the Judge's discretion is based on knowledge that can only be ascertained through an evidentiary hearing.

Therefore, the Trial Court and Supreme Court of Kentucky committed legal error by denying Minix's motion to withdraw a guilty plea without providing him with an evidentiary hearing that is required by RCr 8.10.

III. ADAIR COUNTY JAIL HAS VIOLATED ZACHARIAH MINIX'S 8TH AMENDMENT RIGHT TO PROTECT AGAINST CRUEL AND UNUSUAL PUNISHMENT DUE TO CONFINEMENT CONDITIONS.

The United States Constitution as well as the State of Kentucky Constitution protects citizens against cruel and unusual punishment. U.S.C.A. Const. Amend. 8; KY Const. § 17. Under Kentucky Constitution section 254, the "commonwealth shall maintain control of the discipline, and provide all supplies and for the sanitary conditions of the convicts, and the labor of the convicts may only be leased." KY Const. § 254. "Conditions [in prison] must not involve the wanton and unnecessary infliction of pain, nor may they be grossly disproportionate to the severity of the crime warranting imprisonment." *Rhodes v. Chapman*, 452 U.S. 337, 345 (1981). Prison conditions "alone or in combination, may deprive prisoners of the minimal civilized measure of life's necessities and thus violate the Eighth Amendment." *Id.* The "obvious cruelty inherent" in putting inmates in certain wantonly "degrading and dangerous" situations provides the facility and its officers "with some notice that their alleged conduct violate[s]" the Eighth Amendment. *United States* v. *Lanier*, 520 U. S. 259, 271 (1997).

In *Taylor v. Riojas*, Mr. Taylor was an inmate in the custody of the Texas Department of Criminal Justice where he was placed in unsanitary cells. *Taylor v. Riojas*, No. 19-1261, slip op. at 1 (U.S. Nov. 2, 2020) (per curia). He stayed in a cell covered in feces for 4 days and a frigidly cold cell with a clogged drain in the floor for another two days where he had to lay naked in raw sewage due to the lack of a bunk in the cell and Taylor being confined without clothing. *Id*. The Supreme court vacated and remanded the decision of the Fifth Circuit Court of Appeals stating that they properly held that the conditions of Mr. Taylor's confinement violated the Eighth Amendment's prohibition on cruel and unusual punishment, but they erred in granting the qualified immunity standard because no reasonable correctional officer could have concluded that, under the extreme circumstances of this case, it was constitutionally permissible to house Taylor in such deplorably unsanitary conditions for such an extended period of time. *Id* at 2-3.

Throughout the duration of this case Minix had been incarcerated in Adair County Jail for 637 days before he was released after entering his plea agreement. During that period time Minix was incarcerated he had to share a cell with multiple inmates at times reaching up to 15 people per cell. Minix also expressed the dirtiness of the cell with the overcrowding of inmates that resulted in bed bug outbreaks and over all unsanitary conditions. He also reported that the drinking water was unsanitary and was only available from the sink in the cell. Under these unsanitary and overcrowding conditions in combination deprive prisoners of the minimal civilized measure of life's necessities ultimately putting them

in degrading and dangerous situations. Also, Minix's lack of safe and appropriate medical treatment for his severe diabetic condition has put him in an extremely dangerous situation of severe illness, coma, or even death. The conditions that Minix has been subjected to during his incarceration is a wanton violation of his basic minimum human necessities and necessary medical treatment. Therefore, the Adair County Jail has violated Minix's right to be protected against cruel and unusual punishment due to his living conditions and treatment in violation of the Eighth Amendment.

CONCLUSION

This case presents several important issues concerning the Petitioner's fundamental due process rights under the Fifth Amendment of the United States Constitution, as made applicable to the States by the Fourteenth Amendment to the United States Constitution, when the Petitioner's request to withdraw his plea of guilty and the courts abuse of discretion, in refusing to permit the petitioner to have an evidentiary hearing on his motion to withdraw plea.

This Court can resolve the questions presented, and resolve the petitioner's liberty interest at stake under the due process clause of the Fourteenth Amendment, by accepting review of this case.

The petition for writ of certiorari should be granted.

Respectfully submitted this _____ day of

_____, 2023

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI
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COMMONWEALTH OF KENTUCKY
29TH JUDICIAL CIRCUIT
ADAIR CIRCUIT COURT
INDICTMENT NO: 20-CR-00165

COMMONWEALTH OF KENTUCKY

PLAINTIFF

V.

JUDGMENT and SENTENCE
On
PLEA of GUILTY

ZACHARIAH M. MINIX
Date of Birth: 05/11/1999 Social Security No. *** **-9110

*** *** *** ***

DEFENDANT

The defendant at arraignment entered a plea of not guilty to the following charge(s) contained in the indictment(s):

Count 1: Kidnapping Minor

Count 2: Unlawful Transaction with a Minor in the First Degree Illegal Sex Act Victim Under 16 years of age

Count 3: Rape in the First Degree

Count 4: Possess/View Matter Portraying Sexual Performance by Minor

Count 5: Possession of Marijuana

And on March 29, 2022, having appeared in open court with her attorney, Honorable Luke Lawless, by agreement with the attorney for the Commonwealth she withdrew her plea of not guilty and entered a plea of GUILTY. Finding that the defendant understands the nature of the charges against her including the possible penalties, that the defendant knowingly and voluntarily waives her right to plead not guilty, to be tried by a jury, to compel the attendance of witnesses in her behalf, to confront and cross examine witnesses and to appeal her case to a higher court, and finding further that the defendant understands and voluntarily waives her right not to incriminate herself, her right to be represented by an attorney at each stage of the proceedings against her and, if necessary, to have an attorney appointed to represent her and finding that the plea is voluntary, the Court accepts the plea.

On June 28, 2022, the defendant appeared in open court with her attorney Honorable Luke Lawless, and the court inquired of the defendant and her attorney whether they had any legal cause to show why judgment should not be pronounced, and afforded the defendant and her attorney the opportunity to make statements in the defendant's behalf and to present any

information in mitigation of punishment, and the court having informed the defendant and her attorney of the factual contents and conclusions contained in the written report of the presentence investigation prepared by the Division of Probation and Parole and provide defendant's attorney with a copy of the report although not the sources of confidential information, the defendant agreed with the factual contents of said report. Having given due consideration to the written report by the Division of Probation and Parole, and the nature and circumstances of the crime, and to the history, character and condition of the defendant, the court is of the opinion that imprisonment is necessary for the protection of the public because probation, probation with an alternative sentencing plan, or conditional discharge would unduly depreciate the seriousness of the defendant's crime.

No sufficient cause having been shown why judgment should not be pronounced, it is ADJUDGED BY THE COURT that the defendant is guilty of the following original and/or amended charge(s):

Count 1: Kidnapping Minor

Count 2: Unlawful Transaction with a Minor in the Second Degree

Count 3: Rape in the Second Degree

Count 4: Possess/View Matter Portraying Sexual Performance by Minor

Count 5: Possession of Marijuana

<u>The defendant is sentenced to</u>

Count 1:. Fifteen (15) years

Count 2: Five (5) years

Count 3: Ten {10) years

Count 4: Five (5) years

Count 5: Thirty (30) days

Counts 2, 3, 4, and 5 are to run concurrently with each other for a total of Ten (10) years, but Count 1 shall run consecutively to, for a total of Twenty Five (25) year sentence.

This sentence shall run consecutive to any other sentence imposed on the Defendant.

IT IS FURTHER ORDERED the Department of Corrections shall calculate any applicable jail custody credit for the Defendant.

GIVEN UNDER MY HAND AS JUDGE of the Adair Circuit Court, this 9th day

of July, 2022.

DISTRIBUTION:

Hon. Brian Wright (✓)

Commonwealth Attorney

Hon. Luke Lawless (✓) Probation and Parole (✓)

ENTERED

DENNIS LOY, CLERK
JUL 11 2022
ADAIR CIRCUIT DISTRICT COURTS
BY */s/ Annette Burton* D.C.

/s/ *Judy Vance Murphy*

Judy Vance Murphy
JUDGE, 29th Judicial Circuit

RENDERED: AUGUST 24, 2023 NOT TO BE PUBLISHED

SUPREME COURT OF KENTUCKY

2022-SC-0330-MR

ZACHARIAH MINIX

APPELLANT

ON APPEAL FROM ADAIR CIRCUIT COURT

V. HONORABLE JUDY VANCE MURPHY, JUDGE NO. 20-CR-00165

COMMONWEALTH OF KENTUCKY

APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Zachariah Minix (Minix) pled guilty to one count each of kidnapping, second-degree unlawful transaction with a minor, second-degree rape, possession or viewing of materials portraying a sexual performance by a minor, and possession of marijuana. Before sentencing, Minix moved to withdraw his guilty plea, and the circuit court denied the motion. He now appeals the circuit court's ruling as a matter of right.[1] After review, we find no error occurred in the trial court's ruling and affirm.

I. FACTS AND PROCEDURAL BACKGROUND

On August 18, 2020, Minix and another man, Ethan Harville (Harville) took the thirteen-year-old victim in this case, Jane,[2] from Colorado and intended to take her to Tennessee, Minix's state of residence. Both Minix and Harville were twenty-one years old at the time of the offenses herein. Because this

[1] Ky. Const. § 110.

[2] As the victim is a minor, this opinion will use a pseudonym to protect her privacy.

case was disposed of pursuant to a guilty plea, the facts surrounding the kidnapping were not fully developed in the record before us.

But we discern that Minix met the victim through the internet, and that she initially told him she was older than she was. However, at some point while en route from Colorado to Tennessee, Minix was informed over the phone by both Jane's father and Colorado law enforcement that she was in fact thirteen. Minix did not return Jane upon learning this, and instead continued toward Tennessee. At some point during that trip, Minix threw Jane's phone out of the car.

Three days after Jane was taken investigators were able to locate her using cell phone data, presumably from Minix's phone. They narrowed the location down to a room at a Sleep Inn Hotel in Adair County, Kentucky. Minix and Harville refused to open the door when officers attempted to gain entry to the room, and the officers ultimately had to use a key card obtained through the hotel's staff to enter. Jane was found in the room, and she later informed the officers that Minix had raped her the day prior while she was trying to take a shower.

On November 5, 2020, Minix was indicted by a grand jury for one count each of kidnapping, first-degree unlawful transaction with a minor, first-degree rape, possession or viewing of matter portraying a sexual performance by a minor, and possession of

marijuana.

Both federal law enforcement and several state law enforcement agencies were involved in this case. As such, the evidence submitted in discovery was extensive and several pre-trial hearing dates and trial dates were set and then subsequently extended. It appears that defense counsel and the Commonwealth were actively negotiating a plea deal from at least March 2021 to December 2021. During a hearing on January 25, 2022, defense counsel informed the court that the defense had received an offer for a plea deal from the Commonwealth that Minix was interested in, but Minix still had questions that counsel was trying to get answers for regarding wait times for the sex offender treatment program due to COVID-19. The defense requested a few more days for Minix to decide. Three days later, on January 28, defense counsel reported that Minix and his family had differing views on the Commonwealth's offer and Minix still had not decided. The Commonwealth and defense counsel agreed that March 29, 2022, would be the cut off date for Minix to either accept or reject the Commonwealth's plea offer.

On March 29, Minix and his counsel agreed to and signed the Commonwealth's plea agreement. Under the terms of the agreement, the Commonwealth amended Minix's charge of first-degree unlawful transaction with a minor to second-degree unlawful transaction with a minor. This

downgraded that charge from a Class B felony, punishable by imprisonment for 10-20 years, to a Class D felony, punishable by imprisonment for 1-5 years.

The Commonwealth further agreed to amend the charge of first-degree rape to second-degree rape. This downgraded the charge from a Class B felony, punishable by imprisonment for 10-20 years, to a Class C felony punishable by imprisonment for 5-10 years. Amending both charges in this manner also meant that Minix would not be considered a "violent offender" pursuant to KRS[3] 439.3401(1)(i) and KRS 439.3401(1)(f), respectively. He therefore would not have to serve 85% of his sentence before attaining eligibility for parole. [4]

Under the plea agreement, the Commonwealth recommended the following sentences: fifteen years for kidnapping, five years for second-degree unlawful transaction with a minor, ten years for second-degree rape, five years for possession or viewing a matter portraying a sexual performance by a minor, and thirty days for possession of marijuana. All charges except the kidnapping charge would run concurrently for a total of ten years, and that ten-year sentence would run consecutively with the fifteen-year sentence for kidnapping for a total of twenty-five years. Of note, the

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[3] Kentucky Revised Statute.

[4] KRS 439.3401(3)(a) ("A violent offender who has been convicted of a ... Class B felony shall not be released on probation or parole until he has served at least eighty-five percent (85%) of the sentence imposed.").

plea agreement also required Minix to "[acknowledge] that he will be deemed to be a 'sexual offender,'" and that "he will be subject to lifetime registration on the sex offender registry."

On the same date, March 29, the defense filed a motion to enter a guilty plea, and the circuit court held a standard *Boykin*[5] plea colloquy on the motion. During the colloquy, Minix agreed that he had sufficient time to review the plea agreement with his attorney, and that he was satisfied with the services rendered by his attorney. He stated that he did not have any questions for the court or his attorney regarding the plea agreement. In addition, he understood the constitutional rights he was waiving by entering the guilty plea, including: his right not to testify against himself, his right to a speedy and public trial by jury, his right to confront and cross-examine witnesses, and his right to appeal. Defense counsel stated that he had gone over the plea agreement with Minix and that the plea was consistent with his advice. The court and Minix then had the following exchange:

Court: Are you pleading guilty because you are guilty?

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[5] *See Boykin v. Alabama,* 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969)
(holding that due process requires that a trial court must make an affirmative showing on the record that a guilty plea is voluntary and intelligent before it may be accepted).

Minix: Yes, your honor.

Court: Is your plea of guilty being made freely, knowingly, intelligently, and voluntarily?

Minix: Yes, your honor.

Minix entered a guilty plea to every count of the indictment against him, which were stated individually by the court. The court accepted Minix's guilty plea, finding it was made freely, knowingly, voluntarily, and intelligently. Sentencing was initially scheduled for May 10, 2022, but was later continued to June 28, 2022.

Before discussing the events of the sentencing hearing, we note for context that in accordance with Minix's sex crime convictions, he was classified as a "sexual offender." Because of this, Minix was required by statute to complete the sex offender treatment program before he could attain eligibility for parole.[6] In order to progress through the sex offender treatment program, individuals are required, *inter alia,* to admit guilt for the sexual offenses they committed. We further highlight that prior to the sentencing hearing, Minix was represented by attorney Luke Lawless (Lawless). But, on the morning of the sentencing hearing, attorney Scott Lanzon (Lanzon) also appeared to represent Minix as co-counsel alongside Lawless.

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[6] KRS 197.045(4) ("A sexual offender who does not complete the sex offender treatment program for any reason shall serve his or her entire sentence without benefit of sentencing credit, parole, or other form of early release.").

During the hearing, Lawless and Lanzon claimed that they had filed a written motion to withdraw Minix's guilty plea. The circuit court stated that the motion had not been filed and requested that the defense state its grounds on the record. Lawless argued:

> After looking at the PSI[7] and talking to Mr. Minix and to Mr. Lanzon, my client wants to try the case. He's not going to be able to make these admissions of guilt. And also, a part of this sex offender treatment that he would have to complete with this currently, he's not going to make these admissions so he's not going to complete it and he's not going to, he'll never complete the program or the requirements they're going to ask him to do to be parole eligible. It's never going to happen. So I think at this point in time the only option

[7] Pre-sentence investigation report.

> that we have is to try the case.

The Commonwealth had not received the motion and objected to it. The Commonwealth believed the motion to be "buyer's remorse" and argued that it had discussed all the terms of the agreement with Lawless at length. The Commonwealth also asserted that Lawless discussed parole eligibility and other details with Minix and his family so that everyone went into the plea agreement with "eyes wide open." It argued that Minix knew what he was doing when he entered the plea and that they should proceed with sentencing.

As the defense's written motion is not included in the certified record on appeal, and an order by the circuit court ruling on the motion is likewise absent, we must rely on the oral arguments made by the defense and the oral ruling of the circuit court. That exchange occurred as follows:

> **Court:** I'm reading through the [sex offender evaluation report] that was completed. Just going back to your argument Mr. Lawless, it says that the defendant stated he understands that his behavior was wrong and that he will enter into the sex

offender treatment program to help him understand what motivated him to commit the sex offenses, he is amenable to treatment. So, explain to me again what your argument is.

Defense (Lawless): Well, he is amenable to treatment, of course he would be willing to do whatever he needs to do to move forward.

But as part of that treatment, the issue is going to be that, what they're going to ask him to do is to admit to things that he's not going to admit to doing because he maintains he didn't do those things. So that's the one part of it, not that he's not willing to do the treatment aspect of it, but to admit to doing things that he's saying he didn't do, they're not going to progress him through the treatment program. He's never going to be able to

complete it because my understanding from, I've spent a lot of time on the phone trying to get some answers from some higher ups from probation and parole and from everybody that's with the sex offender treatment program, I've called several jail facilities trying to get some more specific answers to these questions and that part maybe came in too late but this was also as a response to him asking me to do these things. He wanted more information and we found this out and it's like well, if he's not going to admit to these certain things that are contained in the PSI and certain allegations that are in the indictment then he's not going to be able to complete the treatment program. He's basically going to be stalled out on whatever phase

number that it is because he's not going to admit.

Court: And again, it states in this report Mr. Minix has admitted to committing the sex crimes with which he is charged and to which he pled guilty and I'm not sure exactly what it is that he doesn't want to admit guilt to. But of course this court goes over a very detailed questioning with each defendant when they enter a guilty plea and I asked him specifically 'are you pleading guilty because you are guilty?' and his answer was yes.... He was unequivocal, he didn't tell me, you know, I'm taking this because it's a good deal.... I think it's a stall tactic and I'm ready to proceed with sentencing.

Defense (Lanzon): I think the other issue is that it's not a one- or two-year sentence, it's a twenty-year

sentence, it's a major sentence. He was incarcerated leading up to the plea, so the amount of pressure that was by his own admission, and him and I have gone through it as it relates to his colloquy with the court and I think upon reflection, I know the state has indicated it's buyer's remorse. Well, what was he admitting to under those circumstances is what he's having the questions about. And so I. understand this court may view that as a stall tactic but we are looking at a twenty year sentence-

Court: Twenty-five.

Defense (Lanzon): Twenty-five. I mean that's a major, major life alteration.

Court: Sure. And there are major, major, major crimes that he committed, and told me that he did commit, against a child.

Defense (Lanzon): And so, as the state is well aware, there are many extenuating circumstances with this case, they've seen the text messages they've seen how this transpired over the internet, and so, what we're looking for is a trial date as quick as this court can accommodate it.

Court: He's been in jail for 627 days. He's had time to consider whether or not he is guilty, so when I ask him if he's pleading guilty because he's guilty, I take him at his word. 627 days he's had time to consider whether or not he committed these crimes and wants to admit to that. Mr. Lawless is a fine attorney; I'd recommend him to anyone. I'm not allowed to recommend attorneys but if I were he'd be on the top of my list. He's had competent counsel.

> I see no reason to not go forward with sentencing today.
>
> **Defense (Lanzon):** You're honor what we're looking for-
>
> **Court:** I heard what you're looking for. It's overruled.

The court then gave the defense time to go over the PSI with Minix. When the hearing reconvened, the court asked Lawless if he would like to make a statement on Minix's behalf. He stated:

> I would just like to reiterate what we had put on the record when we came up the first time, judge. When I stood up here with Mr. Minix at the end of March when we entered this plea, I agree with [the Commonwealth's] statement that we had worked pretty hard on trying to get this deal put together, but there were certain aspects of it that came together at the very last minute, one of which, the main one, that came together

at the last minute was parole eligibility and how that would work. And I specifically remember meeting with [Minix] in the holding cell that day trying to go through some of these last minute details on what this plea would mean because basically that was our deadline date, we had to make a decision right then and I thought at the time that when I was speaking of parole eligibility that his understanding of what that meant was greater than what it seems to be and that that's not an automatic at all; just because you're eligible does not mean that you're going to receive it and that was kind of what he was relying on in accepting this deal along the way. I understand that now… So I just want to put that on the record that I don't feel like after

> speaking with [Minix] again and going through this paperwork with him I don't know that he realized exactly what that eligibility status meant and so I would reiterate that we would like to have a hearing on the motion to withdraw the plea. I understand that the court has already ruled on that, but I just want to put it on the record again that we're going to maintain that we would like to withdraw the plea and move the case on for trial. That's my statement your honor.

The court then asked Minix if he would like to make a statement, but he declined. The Commonwealth responded that given the facts of the case, Minix's lack of a valid legal defense, and the sentence that Minix would otherwise be facing, it was a fair deal. It further pointed out that Minix had already admitted guilt of the crimes to both the court and the evaluator that compiled the sex offender evaluation report and that he told the evaluator that he committed the crimes and that he is amenable to treatment. Moreover,

it argued that no one is guaranteed parole at any time and that parole would be dependent on many other factors in addition to his completion of the sex offender treatment program.

The circuit court, noting that it had reviewed the PSI and the sex offender evaluation report, imposed the sentence recommended by the Commonwealth and agreed to by Minix. Minix now appeals the circuit court's ruling to this Court.

Additional facts are discussed below as necessary.

II. ANALYSIS

A. Substantial evidence supported the circuit court's finding that Minix's guilty plea was voluntary, and the court did not abuse its discretion by denying his motion to withdraw it.

Minix first argues before this Court that his guilty plea was involuntary because he did not know that he would be required to complete the sex offender treatment program to be eligible for parole and he did not know he would have to make admissions of guilt to complete the sex offender treatment program.[8]

[8] Minix's appellate brief also raises new arguments concerning his status as a brittle diabetic and poor living conditions in the Adair County Jail as contributing to the involuntariness of his plea. These arguments were not raised before the circuit court as grounds to withdraw his guilty plea. We will accordingly limit the arguments we address to those raised before the circuit court.

Relying on RCr[9] 8.10, *Rodriguez v. Commonwealth,* [10] and *Rigdon v. Commonwealth,*[11] Minix further argues that the circuit court reversibly erred by declining to hold an evidentiary hearing to determine whether his guilty plea was voluntary before denying his motion to withdraw his guilty plea.

The Commonwealth counters that under *Edmonds v. Commonwealth,* [12]parole eligibility is not considered a "direct consequence" of a guilty plea and, therefore, ignorance regarding parole eligibility cannot render a plea involuntary. For this reason, and for additional reasons explained herein, we agree with the Commonwealth and affirm the circuit court's ruling.

As previously mentioned, Minix filed a pre-sentencing motion under RCr

8.10 to withdraw his guilty plea.

> [T]o be entitled to relief on that ground the movant must allege with particularity specific facts which, if true, would render the plea involuntary under the Fourteenth Amendment's Due

[9]Kentucky Rule of Criminal Procedure.
[10] 87 S.W.3d 8 (Ky. 2002).
[11] 144 S.W.3d 283 (Ky. App. 2004).
[12] 189 S.W.3d 558 (Ky. 2006).

> Process Clause, would render the plea so tainted by counsel's ineffective assistance as to violate the Sixth Amendment, or would otherwise clearly render the plea invalid. Motions which fail adequately to specify grounds for relief may be summarily denied, as may be motions asserting claims refuted or otherwise resolved by the record. [13]

Whether a plea was entered voluntarily is an inherently fact-intensive inquiry, and it is well-established that the trial court "is in the best position to determine the totality of the circumstances surrounding a guilty plea."[14] Accordingly, "[a] trial court's determination on whether [a] plea was voluntarily entered is reviewed under the clearly erroneous standard," i.e., whether the ruling was supported by substantial evidence.[15] "Substantial evidence means evidence of substance and relevant consequence having the fitness to induce conviction in the minds of

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[13] *Commonwealth v. Pridham,* 394 S.W.3d 867, 874 (Ky. 2012) (internal citations omitted).
[14] *Rigdon,* 144 S.W.3d at 288 (citing *Bronk v. Commonwealth,* 58 S.W.3d 482, 486 (Ky. 2001)).
[15] *Rigdon,* 144 S.W.3d at 288.

reasonable men."[16] "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."[17] A trial court's ruling is an abuse of discretion if the decision "was arbitrary, unreasonable, unfair, or unsupported by sound legal principles."[18]

Minix asserted to the circuit court that his plea was involuntary because

he did not know that he was required to complete the sex offender treatment program to become eligible for parole and, in addition, that he did not know he would be required to make admissions of guilt to complete the sex offender treatment program. A voluntary plea is one entered by a defendant that is "fully aware of the **direct** consequences" of the guilty plea.[19]

> [T]he "direct" consequences of a guilty plea, those consequences of which the defendant must be aware for his plea to be deemed voluntary as a matter of due process,

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[16] *See, e.g., Smyzerv. B.F. Goodrich Chem.* Co., 474 S.W.2d 367 (Ky. 1971).
[17] *Rigdon,* 144 S.W.3d at 288.
[18] *Commonwealth v. English,* 993 S.W.2d 941, 945 (Ky.1999).
[19] *Pridham,* 394 S.W.3d at 876 (quoting *Brady v. United States,* 397 U.S. 742, 755 (1970)) (emphasis added).

> [are] understood as the waiver of the defendant's trial-related constitutional rights and the potential penalties to which he was subjecting himself by confessing or acquiescing to the state's charges and those to which he would be subjected if he lost at trial, i.e., those matters within the direct sentencing authority of the trial court.[20]

In contrast, "[m]atters outside the trial court's sentencing authority, [including] parole eligibility ... have been deemed 'indirect' or 'collateral' consequences of the plea" that do not affect the validity of the plea.[21]

For example, in *Edmonds,* Todd Edmonds pled guilty to several charges, some of which required him to be classified as a "violent offender" under KRS 439.3401.[22] This meant that he would be required to serve 85% percent of his sentence before becoming eligible for parole.[23] The trial court accepted Edmond's guilty plea after conducting a *Boykin*

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[20] *Pridham,* 394 S.W.3d at 877.
[21] *Id.*
[22] *Edmonds,* 189 S.W.3d at 566-67.
[23] *Id.* at 567.

hearing.[24] After the guilty plea was accepted, but prior to sentencing, Edmonds moved to withdraw his guilty plea.[25] The trial court did not hold an evidentiary hearing on his motion; rather, "having already conducted the *Boykin* hearing when the plea was entered, [the court] denied the motion and simply referred to its previous *Boykin* colloquy in finding that [Edmond's] plea was voluntarily entered."[26]

On appeal, Edmonds asserted that his guilty plea was involuntary, in relevant part, because "he was misinformed by defense counsel regarding when he would be released from the penitentiary."[27] He claimed that his defense counsel sent him a letter prior to his plea colloquy which "assured him that he would be *released,* rather than merely eligible for parole, at the expiration of 85% of his sentence, and that he relied on this assurance in pleading guilty."[28]

This Court disagreed, noting that "[a] defendant's eligibility for parole is not a 'direct consequence' of a guilty plea the ignorance of which would render the plea involuntary."[29] The Court further discussed that any incorrect

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[24] *Id.* at 565-66.
[25] *Id.* at 566.
[26] *Id.*
[27] *Id.*
[28] *Id.* at 567.
[29] *Id. See also Stiger v. Commonwealth,* 381 S.W.3d 230, 235 (Ky. 2012) (holding that that the trial court's failure to advise the defendant that he would be ineligible for parole until he served 85% of his sentence did not render his plea involuntary because parole is not a direct consequence of a guilty plea).

information Edmond's attorney may have provided him was remedied during his plea colloquy wherein his attorney and the trial court discussed his sentence and parole eligibility.[30] The court held that the trial court did not err by denying Edmond's motion to withdraw his guilty plea because there was "substantial evidence to support the trial court's determination that the plea was voluntary and intelligent."[31]

It should also be noted that a similar outcome was reached by this Court in *Pridham, supra,* wherein defendant Jason Cox's counsel "not only failed to advise him of the potential parole consequences attaching to sex offender treatment but incorrectly assured him that the sex offense would not affect his parole eligibility."[32] Upon learning that sex offender treatment was a prerequisite to parole eligibility, Cox filed a motion to withdraw his guilty plea which the trial court denied.[33]

On appeal to this Court, Cox argued that the U.S. Supreme Court's decision in *Padilla v. Kentucky,*[34] "utterly invalidated the distinction between the direct and collateral consequences of a guilty plea, and imposed on defense counsel a constitutional duty to offer accurate advice about any and all

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[30] *Edmonds,* 189 S.W.3d at 567-68.
[31] *Id.* at 568.
[32] *Pridham,* 394 S.W.3d at 881.
[33] *Id.* at 874.
[34] 559 U.S. 356 (2010).

consequences that might bear on a reasonable defendant's plea decision."[35] In *Padilla,* the U.S. Supreme Court rejected the collateral versus direct distinction as it related to the deportation consequences of a guilty plea and concluded that such a severe penalty should not be categorically removed from counsel's constitutional duty to advise by simply dubbing it a "collateral consequence."[36]

The *Pridham* Court rejected Cox's argument under *Padilla.* The Court explained, in relevant part:

> we understand *Padilla* as invalidating the collateral consequences rule for deportation and for consequences "like" deportation in their punitive effect, their severity, and their intimate relationship to the direct criminal penalties where the consequence is easily determined from a clear and explicit statute. The deferral of Cox's parole eligibility until he completes sex offender treatment is not like deportation in

[35] *Pridham,* 394 S.W.3d at 881.
[36] *Padilla,* 559 U.S. at 366.

> any of these respects.
>
> To begin with, sex offender treatment is not a punishment or a penalty. It is a rehabilitative measure the General Assembly has deemed important enough to make mandatory. As then-Judge, now Justice, Schroder observed for the Court of Appeals in *Garland v. Commonwealth,* 997 S.W.2d 487 (Ky. App. 1999), the fact that sex offender treatment has been made a condition precedent to parole does not affect a defendant's underlying sentence and does not enhance his punishment, even where the effect of the condition precedent is to delay his parole eligibility.[37]

The *Pridham* Court affirmed the circuit court's denial of Cox's motion to withdraw his guilty

[37] *Pridham,* 394 S.W.3d at 881-82.

plea.[38]

Based on the foregoing, we disagree with Minix's contention that his misunderstanding of when he would be eligible for parole rendered his plea involuntary and hold that based on the totality of the circumstances, substantial evidence supported the circuit court's finding that his plea was voluntary. During his plea colloquy, the court discussed the direct consequences of his plea: the court discussed the trial-related constitutional rights Minix was waiving by entering a guilty plea, and he stated he understood those rights.[39] In addition, the Commonwealth's offer on a plea of guilty, which was signed by both Minix and his counsel, clearly laid out "the potential penalties to which he was subjecting himself by confessing or acquiescing to the state's charges and those to which he would be subjected if he lost at trial[.]"[40] Moreover, Minix unequivocally stated that he was pleading guilty because he was guilty; that he was satisfied with his counsel's services; that he had sufficient time to consult his counsel regarding the evidence, potential defenses, and the plea agreement itself; and that he had no questions for the court regarding the plea agreement. The circuit court was also highly complementary of his counsel and felt that he had received adequate representation.

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[38] *Id.* at 886.
[39] *See Id.*at 877.
[40] *Id.*

Minix next argues that the circuit court committed reversible error by refusing to conduct an evidentiary hearing before denying his motion to withdraw. We disagree. To begin, the plain language of RCr 8.10 imposes no such mandate. That statute simply provides, in relevant part: "At any time before judgment the court may permit the plea of guilty or guilty but mentally ill, to be withdrawn and a plea of not guilty substituted."[41] And, while *Rodriguez* states that "**[g]enerally**, an evaluation of the circumstances supporting or refuting claims of coercion and ineffective assistance of counsel requires an inquiry into what transpired between attorney and client that led to the entry of the plea, i.e., an evidentiary hearing[,]"[42] there is no categorical requirement as Minix alleges. Decisions by both this Court and the Court of Appeals rendered after both *Rodriguez* and *Rigdon* have upheld a trial court's denial of a defendant's motion to withdraw a guilty plea even though the trial court did not conduct a separate evidentiary hearing on the motion, including *Edmonds, supra; Stiger v. Commonwealth, supra;*[43] *Williams v. Commonwealth:,*[44] and *Elkins v. Commonwealth.*[45]

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[41] RCr 8.10.
[42] 87 S.W3d at 11 (emphasis added).
[43] To be clear, even though Stiger's motion was a post-conviction RCr 11.42 claim, the standard for relief is the same as a motion filed under RCr 8.10. *See Pridham,* 394 S.W.3d 867 at 874.
[44] 233 S.W.3d 206,210 (Ky. App. 2007).
[45] 154 S.W.3d 298, 299 (Ky. App. 2004).

Indeed, even though the Court of Appeals in *Rigdon* reiterated that a separate evidentiary hearing is the preferred course, it stated in dicta that a failure to do so did not necessarily constitute reversible error. In *Rigdon,* Larry Rigdon pled guilty to two charges following a *Boykin* colloquy.[46] Prior to sentencing, Rigdon filed a *pro se* motion to withdraw his guilty plea on the ground that it was involuntary due to ineffective assistance of counsel; Rigdon alleged that his attorney had failed to communicate with him, refused to properly investigate, and did not advise him of the options to file a motion in limine to exclude certain evidence or to enter a conditional guilty plea.[47] "No separate evidentiary hearing was conducted. However, at the ... sentencing hearing, Rigdon was given the opportunity before sentencing to explain to the circuit court why he should be permitted to withdraw his plea and how he had suffered from ineffective assistance of counsel."[48] The circuit court summarily denied his motion to withdraw, finding that his plea was entered intelligently and voluntarily.[49]

The Court of Appeals upheld the denial and, regarding the lack of separate evidentiary hearing, noted:

> In the instant case, no evidentiary hearing

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[46] 144 S.W.3d at 285-86.
[47] *Id.* at 286.
[48] *Id.*
[49] *Id.* at 287.

was conducted. Rigdon and his attorney were both given the opportunity to speak about the allegations Rigdon raised in his motion to withdraw his guilty plea at the sentencing hearing, although neither was placed under oath or subjected to cross-examination. Notably, Rigdon has not alleged that this informal hearing was procedurally inadequate or prejudiced him in any way. Therefore, this matter is not before the Court. We observe that even if it were before us, we would find that this informal hearing conducted was sufficient under these circumstances for the circuit court to determine the totality of circumstances surrounding Rigdon's guilty plea. Nevertheless, conducting an

> evidentiary hearing would have been the more prudent course since *Rodriguez* indicates that such a hearing is generally necessary.[50]

Furthermore, more recent case law has refined the standard for a separate evidentiary hearing by stating that "[m]otions adequately alleging valid claims not refuted by the record entitle the movant to an evidentiary hearing,"[51] but "[m]otions which fail adequately to specify grounds for relief may be summarily denied, as may be motions asserting claims refuted or otherwise resolved by the record."[52]

Here, as discussed, Minix alleged that his plea was involuntary because of his misunderstanding regarding when and how he would attain parole eligibility. But, as parole eligibility is a collateral consequence of a guilty plea, it could not have affected the voluntariness of his plea. His motion therefore did not allege a valid claim of involuntariness and the circuit court did not abuse its discretion in summarily denying it.

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[50] *Id.* at 290.
[51] *Pridham,* 394 S.W.3d at 877 (citing *Rodriguez, supra).*
[52] *Pridham,* 394 S.W.3d at 877 (citing *Edmonds,* 189 S.W.3d at 569).

B. Minix's Eighth Amendment argument is not properly before this Court.

Minix also argues that the Adair County Jail violated his rights under the Eighth Amendment of the U.S. Constitution against cruel and unusual punishment due to what he alleges were poor living conditions. As the Commonwealth correctly argues in response, a conditions of confinement claim under the Eighth Amendment must be brought in a separate civil action.[53] Moreover, KRS 454.415(1)(d) directs that "No [civil] action shall be brought by or on behalf of an inmate, with respect to ... A conditions-of-confinement issue[] until administrative remedies as set forth in the policies and procedures of the Department of Corrections, county jail, or other local or regional correctional facility are exhausted." This issue is therefore not properly before us, and we decline to address it.

III. CONCLUSION

Based on the foregoing, substantial evidence supported the Adair Circuit Court's finding that Minix's guilty plea was voluntarily entered and did not abuse its discretion by denying Minix's motion to

[53] *Martin v. Commonwealth,* 639 S.W.3d 433, 437 (Ky. App. 2022).

withdraw his guilty plea without first holding an evidentiary hearing. We accordingly affirm.

All sitting. All concur.

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