

2012 IL App (2d) 101045-U
No. 2-10-1045
Order filed March 26, 2012

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 09-CF-1137
)	
TOMASZ S. KLIMCZYK,)	Honorable
)	Thomas E. Mueller,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Burke concurred in the judgment.

ORDER

Held: The trial court abused its discretion in denying defendant's motion to withdraw his guilty plea: the court did not fully comply with Rule 402, and we could not deem the error harmless, as defendant asserted that he was innocent and pleaded guilty only to escape abuse in jail.

¶ 1 Defendant, Tomasz S. Klimczyk, pleaded guilty to aggravated battery (720 ILCS 5/12-4(b)(18) (West 2008)). He moved to withdraw his plea. The trial court denied the motion and defendant appeals. He contends that the court should have granted the motion where the trial court

improperly admonished him, he was actually innocent, and he pleaded guilty only to escape abusive conditions in the county jail. We reverse and remand.

¶ 2 Defendant was charged with aggravated battery for making contact of an insulting or provoking nature with a police officer. The trial court ordered defendant examined for fitness. The evaluating doctor found defendant fit, although this status was “tenuous.” Defendant was paranoid and delusional with “significant mental and emotional problems.”

¶ 3 On October 23, 2009, the trial court conducted a guilty-plea hearing. The State recited the terms of a proposed agreement under which defendant would plead guilty to one count of aggravated battery, and in exchange, he would be placed on 12 months of nonreporting conditional discharge. The following colloquy occurred:

“THE COURT: Mr. Klimczyk, is that your understanding of what will happen here today?

THE DEFENDANT: (Indicating).

THE COURT: ‘Yes’ or ‘no’?

THE DEFENDANT: Can I speak? Yes.

THE COURT: Do you understand that if you plead guilty, today, to the charge of aggravated battery, that you are giving up certain rights including the right that you have to take this case to a jury trial?

THE DEFENDANT: Yes.

THE COURT: You would also be giving up your right, the right that you have to remain silent, do you understand?

THE DEFENDANT: Yeah.

THE COURT: And have you discussed all of this with your lawyer?

THE DEFENDANT: Yes.

THE COURT: Has Ms. Conant [defense counsel] answered all of your questions?

THE DEFENDANT: Yeah.

THE COURT: Did you have any questions that you want to ask me before we proceed any further?

THE DEFENDANT: Can I go?

THE COURT: Can you go, where?

THE DEFENDANT: Can I leave this jail?

THE COURT: You will be leaving unless they're holding you on a case other than what you're here before me on, yes. This contemplates that you would be released today."

¶ 4 The court explained the charge and the possible penalties. For a factual basis, the prosecutor stated that Chad Calhoon, a security deputy in the Aurora branch court, would testify that he was in uniform and on duty when he asked defendant to get up from a chair. Defendant rose and struck him in the chest with his shoulder. Defendant interrupted the narrative by stating, "Judge, I can't even walk. This is ridiculous." However, defense counsel stipulated to the factual basis. The court found that the plea was voluntary and, after ascertaining that defense counsel and various members of her staff had spoken with defendant at the jail, imposed the agreed-upon sentence.

¶ 5 Defendant later moved to withdraw his plea. The motion contended that defendant pleaded guilty only to escape abusive conditions in jail. The motion included defendant's affidavit detailing the alleged abuse. At the hearing, defendant declined to testify, electing to rest on his affidavit.

¶ 6 The trial court denied the motion, noting that defendant had never previously mentioned the alleged abuse and that he had missed several court dates while preferring to remain in jail. Defendant timely appeals.

¶ 7 Defendant contends that the trial court abused its discretion when it denied his motion to withdraw the plea. Defendant argues that the trial court did not substantially comply with Illinois Supreme Court Rule 402 (eff. July 1, 1997) during the guilty-plea hearing. He argues that the trial court's compliance with Rule 402(a) was incomplete and that the court did not comply with Rule 402(b), which requires the court to ascertain that the plea is voluntary. Ill. S. Ct. Rs. 402(a), (b) (eff. July 1, 1997). Defendant argues that this failure, coupled with his assertion of innocence and his reason for pleading guilty (to escape abusive conditions in the jail), requires that he be allowed to withdraw his plea. The State responds that the court substantially complied with Rule 402 and that the record as a whole demonstrates that the plea was voluntary.

¶ 8 “Before a trial court can accept a guilty plea, Rule 402(a) requires that the defendant be admonished concerning the nature of the charge, the minimum and maximum sentences, the right to plead guilty or not guilty, and the rights that are waived by pleading guilty.” *People v. Sharifpour*, 402 Ill. App. 3d 100, 114 (2010) (citing Ill. S. Ct. R. 402(a) (eff. July 1, 1997)). Rule 402(b) requires:

“The court shall not accept a plea of guilty without first determining that the plea is voluntary. * * * The court, by questioning the defendant personally in open court, *** shall determine whether any force or threats or any promises, apart from a plea agreement, were used to obtain the plea.” Ill. S. Ct. R. 402(b) (eff. July 1, 1997).

¶ 9 “The purpose of Rule 402 admonishments is to ensure that a defendant understands his plea, the rights he has waived by pleading guilty and the consequences of his action.” *People v.*

Dougherty, 394 Ill. App. 3d 134, 138 (2009). However, the failure to properly admonish a defendant pursuant to Rule 402 does not require automatic reversal. *People v. Davis*, 145 Ill. 2d 240, 250 (1991). Substantial, not literal, compliance with Rule 402 is required. *Dougherty*, 394 Ill. App. 3d at 138. “Whether reversal is required depends on whether real justice has been denied or whether defendant has been prejudiced by the inadequate admonishment.” *Davis*, 145 Ill. 2d at 250. If the record shows that a guilty plea was voluntary and not the result of any force, threats, or promises, then any failure to strictly comply with Rule 402 is deemed harmless. *People v. Ellis*, 59 Ill. 2d 255, 257 (1974).

¶ 10 A decision on a motion to withdraw a guilty plea is within the trial court’s discretion and will not be disturbed on appeal absent an abuse of that discretion. *People v. Manning*, 227 Ill. 2d 403, 411-12 (2008). A defendant does not have an absolute right to withdraw his guilty plea, but he should be allowed to do so to correct a manifest injustice. *People v. Hillenbrand*, 121 Ill. 2d 537, 545 (1988). A plea may be withdrawn when it is based on a misapprehension of the facts or the law, or on misrepresentations by defense counsel, when a doubt exists regarding the defendant’s guilt, when the defendant has a defense worthy of consideration, or when the ends of justice would be better served by taking the case to trial. *Davis*, 145 Ill. 2d at 244.

¶ 11 Here, the trial court’s compliance with Rule 402(a) was incomplete. Although it informed defendant of the nature of the charge, the minimum and maximum penalties he faced, and that he would be giving up his right “to take this case to a jury trial,” it did not mention that he had the right to persist in his plea of not guilty and to confront witnesses against him. See Ill. S. Ct. R. 402(a) (eff. July 1, 1997). Moreover, the court failed to substantially comply with Rule 402(b). The court made minimal effort to determine whether defendant’s plea was voluntary. The rule specifically requires

that the court “shall determine whether any force or threats or any promises, apart from a plea agreement, were used to obtain the plea.” Ill. S. Ct. R. 402(b) (eff. July 1, 1997). While the rule prescribes no formula that must be followed, the court here never questioned defendant on these points. This is troubling given that defendant interrupted the recitation of the factual basis to proclaim his innocence and that the only question he asked was whether he could immediately get out of jail. This suggested that, when defendant entered his plea, he was motivated primarily by a desire to be released from jail. Moreover, after defendant filed his motion to withdraw the plea, the court faulted defendant for not coming forward with his allegations sooner. However, Rule 402(b) requires the court to elicit from a defendant information to decide for itself whether the plea is voluntary. Requiring a defendant to volunteer information that would undo the very plea he is entering is contrary to the rule’s purpose. See *People v. Emery*, 36 Ill. App. 3d 466, 469 (1976) (stating that one purpose of Rule 402 is to allow trial court to insure that defendant is not pleading guilty to crime which his or her acts and mental state do not support).

¶ 12 Further, we cannot deem the error harmless. In *People v. Urr*, 321 Ill. App. 3d 544 (2001), the court held that, “where a defendant persists that he is not guilty and persists that he is pleading guilty because he has been sexually assaulted, abused by other inmates, or for any other oppressive reason, we believe the ends of justice will be better served by submitting the case to a trial.” *Id.* at 549. *Urr* is sufficiently analogous to this case that the same result should apply here.

¶ 13 We recognize that a desire to escape from conditions at a jail does not necessarily mean that a plea is involuntary. In *People v. St. Pierre*, 146 Ill. 2d 494, 498-99 (1992), the defendant pleaded guilty to capital murder and waived a jury for sentencing. The trial court expressed concern that the defendant’s only reason for pleading guilty was to escape the “ ‘chaotic’ ” conditions at the Cook

County jail. *Id.* at 507. After the defendant assured the court that his primary motivation for pleading guilty was because he was guilty of committing the crime, the court accepted the plea. The supreme court affirmed. *Id.* at 508.

¶ 14 There are several key distinctions between *St. Pierre* and this case. In *St. Pierre*, the defendant candidly acknowledged his guilt, whereas defendant here seemingly professed his innocence. The supreme court in *St. Pierre* also noted that the defendant failed to make any specific allegations about conditions at the jail. Defendant here did make specific allegations.

¶ 15 We recognize that, given defendant's diagnosis of paranoia and delusional thinking, the trial court could reasonably discount his allegations of abuse at the jail. This is particularly true in light of defendant's reliance on an affidavit instead of testifying about the alleged abuse. Nevertheless, given the trial court's initial failure to comply with Rule 402, defendant's assertion of innocence, and his allegation that the plea was the result of abusive conditions at the jail, we believe that, as in *Urr*, the ends of justice will be best served by permitting defendant to withdraw his plea. We, therefore, hold that the trial court abused its discretion when it denied defendant's motion to withdraw his guilty plea.

¶ 16 We reverse the judgment of the circuit court of Kane County, and we remand the cause for further proceedings.

¶ 17 Reversed and remanded.