

2012 IL App (2d) 110317-U
No. 2-11-0317
Order filed March 23, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Winnebago County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 07-CF-3187
)	
TABORIS D. MERRIWEATHER,)	Honorable
)	Rosemary Collins,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Hudson concurred in the judgment.

ORDER

Held: The trial court did not abuse its discretion in denying defendant's motion to withdraw his guilty plea: the record refuted defendant's assertion that he did not understand the court's admonishments, the court was entitled to credit defense counsel's testimony over defendant's and thus reject defendant's claim of coercion, and defendant did not provide any support for his claim of innocence.

¶ 1 Defendant, Taboris D. Merriweather, appeals from the denial of his motion to withdraw his guilty plea to aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(i) (West 2006)) based on allegations that he sexually penetrated his girlfriend's 10-year-old niece. He contends that he should

be allowed to withdraw his plea, because he did not understand the trial court's admonitions and his attorney coerced him into pleading guilty. We affirm.

¶ 2

I. BACKGROUND

¶ 3 In December 2007, defendant was indicted on two counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1), (b)(1) (West 2006)), a Class X felony. On March 13, 2008, he agreed to plead guilty to a lesser offense of aggravated criminal sexual abuse, a Class 2 felony, with a recommendation from the State of a sentence of 48 months' probation.

¶ 4 At the guilty plea hearing, defendant asked the court multiple questions about the effect of the plea on his parental rights in a separate case. Following that discussion, the court admonished defendant about the charge and the sentencing range. The court also fully admonished him about the rights he would give up by pleading guilty. Defendant stated that he understood. He denied that any promises, threats, or force were used to cause him to plead guilty and he said that he spoke with his attorney, Glenn Jazwiec, about his case and was satisfied with Jazwiec's representation.

¶ 5 The State provided a factual basis that included information from the victim that defendant called her into a bedroom, told her to pull down her pants, and committed an act of sexual abuse. The victim's brother told investigators that he saw defendant touch the victim's vaginal area while their clothes were off. Defendant was 30 years old at the time of the incident.

¶ 6 The trial court told defendant that it was up to him whether to plead guilty, and defendant said "guilty I guess." The court accepted the plea, and defendant waived his right to a sentencing hearing. On July 7, 2008, the court sentenced him to 48 months' probation.

¶ 7 On August 6, 2008, defendant filed a *pro se* motion to withdraw the plea, alleging that there was a lack of evidence and that there had not been a thorough investigation. He stated that he

wanted to prove his innocence. Counsel was appointed and, after a hearing, during which defendant stated that he was innocent and wanted to clear his name, the motion was denied. Another motion to withdraw the plea was filed by counsel and another hearing was held, during which defendant stated that he wanted to clear his name, and that he had witnesses and an alibi. However, no specific evidence was provided on those topics. That motion was also denied. On appeal, we remanded the cause because of counsel's failure to comply with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). *People v. Merriweather*, No. 2-08-1225 (2010) (unpublished order under Supreme Court Rule 23). On remand, a new motion was filed, alleging that defendant did not understand the charge or the court's admonitions and that Jazwicz coerced him into pleading guilty.

¶ 8 At the hearing on the motion, defendant testified that his plea was not voluntary. He said that he did not know what the term "aggravated" meant at the plea hearing and that Jazwicz told him he would be stupid not to take the deal. He also said that Jazwicz did not explain the case to him or give him enough time to consider the State's offer. He said that he did not tell the court about the problems because Jazwicz threatened to drop him as a client and not return his money. After the plea, defendant asked for a return of money paid to Jazwicz, who gave him only a portion of the amount requested. Defendant also said that he did not talk much at the plea hearing because he wanted to get out of jail and fight the charge and because he "froze up" when asked questions.

¶ 9 Jazwicz testified and denied defendant's allegations about his representation. He said that he spoke with defendant numerous times at the jail and that he explained the pros and cons of the State's offer. Jazwicz told defendant that, if he went to trial, lost, and received a prison sentence, it would look like rejecting the plea was not the smartest move, while if he won at trial, then accepting the offer would not have been the smartest thing. Jazwicz also said that he returned money

that was not applied toward his representation, but defendant thought that he should have gotten more back.

¶ 10 The trial court found Jazwicz's testimony to be credible and found that defendant was not coerced into pleading guilty. The court also found that the plea was voluntary, observing that defendant communicated well at the plea hearing and stated his understanding of the admonitions. Accordingly, the court denied the motion to withdraw the plea. Defendant appeals.

¶ 11 II. ANALYSIS

¶ 12 Defendant argues that the trial court abused its discretion when it denied his motion to withdraw the plea. In particular, he contends that his plea was involuntary and that he should be allowed the opportunity to show that he is innocent.

¶ 13 A defendant does not have an absolute right to withdraw a guilty plea and bears the burden of demonstrating to the trial court the necessity of withdrawing the plea. *People v. Allen*, 323 Ill. App. 3d 312, 315 (2001). Leave to withdraw a guilty plea is granted not as a matter of right, but as required to correct a manifest injustice under the facts involved. *People v. Hillenbrand*, 121 Ill. 2d 537, 545 (1988). Leave should be granted if it appears that (1) the plea was entered on a misapprehension of the facts or the law, (2) there is doubt as to the guilt of the accused, (3) the accused has a meritorious defense, or (4) the ends of justice will be better served by submitting the case to a jury. *People v. Davis*, 145 Ill. 2d 240, 244 (1991).

¶ 14 A trial court's denial of a motion to withdraw a guilty plea will not be disturbed on appeal unless the decision was an abuse of discretion. *Id.* Subjective impressions, without substantial objective proof, are not sufficient grounds on which to withdraw a guilty plea. *Id.* The ultimate question is whether the plea was entered knowingly and voluntarily. *People v. Manning*, 371 Ill.

App. 3d 457, 459 (2007). “A proper and meticulous admonition of the defendant according to [Illinois Supreme Court Rule 402(a) (eff. July 1, 1997)] cannot simply be ignored.” *People v. Spriggle*, 358 Ill. App. 3d 447, 451 (2005). Thus, “[a]n allegation or assertion of innocence without factual substance is insufficient to require allowing the withdrawal of the plea if defendant is adequately informed of the nature of the charges and the consequences of such plea.” *People v. Dumas*, 50 Ill. App. 3d 637, 641 (1977).

¶ 15 Here, defendant alleges that he did not understand the charge and the admonitions and that he was coerced into pleading guilty. The record, however, supports the trial court’s findings to the contrary. Defendant was fully and carefully admonished about the plea. He also stated his understanding of the charge and the admonitions and, throughout the proceedings, he showed an ability to communicate well. See *People v. Robinson*, 157 Ill. App. 3d 622, 629 (1987) (if a plea of guilty is to have any binding effect, the extensive admonitions given by the trial court must be held to overwhelm the defendant’s current assertion that he entered his plea involuntarily). Further, the court was entitled to accept Jazwiec’s testimony as more credible than defendant’s. See *People v. Mercado*, 356 Ill. App. 3d 487, 497 (2005) (the trial court bears the burden of assessing the credibility of witnesses who testify at a hearing on a motion to withdraw a guilty plea.) To the extent defendant argues that he is actually innocent, he did not provide any substantive facts to support that claim. Thus, the court’s denial of the motion to withdraw the plea was not an abuse of discretion.

¶ 16

III. CONCLUSION

¶ 17 The court did not abuse its discretion when it denied the motion to withdraw the plea. Accordingly, the judgment of the circuit court of Winnebago County is affirmed.

¶ 18 Affirmed.

