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2012 IL App (3d) 110624-U

Order filed July 24, 2012

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
	)	Whiteside County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-11-0624
v.	)	Circuit No. 07-CF-188
	)	
JAMES R. TODD,	)	Honorable
	)	John L. Hauptman,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice Schmidt and Justice Carter concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant received effective assistance of counsel and the trial court did not abuse its discretion by denying defendant's motion to withdraw his guilty plea. The trial court properly denied defendant's motion to vacate a directed finding.

¶ 2 Defendant, James R. Todd, pled guilty to one count of unlawful delivery of a controlled substance (720 ILCS 570/401(a)(2)(A) (West 2006)). Following his guilty plea, defendant filed a motion to enforce guilty plea. The trial court denied the motion following a directed finding for the State. Thereafter, defendant filed two motions requesting the court to vacate the directed

finding, vacate the guilty plea, and reconsider his sentence, which the trial court denied. Defendant appeals on the grounds that: (1) he received ineffective assistance of trial and substitute counsel because trial counsel led him to believe there was a 10-year sentencing cap with his guilty plea and substitute counsel was not aware of this alleged 10-year cap; (2) his guilty plea was not knowingly and voluntarily entered since defendant had relied on counsel's statement he had negotiated a 10-year sentencing cap; (3) he was denied the benefit of the bargain he made with the State with respect to the 10-year sentencing cap; and (4) his rights to due process were violated when the trial court denied his motion to vacate a directed finding. We affirm.

¶ 3 FACTS

¶ 4 The state charged defendant with one count of unlawful delivery of a controlled substance (720 ILCS 570/401(a)(2)(A) (West 2006)) in two separate criminal cases, Whiteside County Case Nos. 07-CF-188 and 07-CF-140. Defendant's attorney, Daniel Radakovich, negotiated an open plea agreement with the state which would result in the dismissal of Case No. 07-CF-140 in exchange for a guilty plea in the other pending criminal action, Case No. 07-CF-188. Due to a scheduling conflict, Radakovich could not be present when defendant entered his guilty plea in Case No. 07-CF-188 and arranged for attorney Thomas Murray to be present with his client.

¶ 5 Prior to accepting the guilty plea in Case No.07-CF-188, the trial court asked defendant if anyone had promised him anything other than the terms of the open plea agreement disclosed to the court that day. Defendant responded, "No, sir," and the trial court accepted defendant's plea of guilty. On that date, as agreed, the State dismissed the remaining case and agreed to a reduction of defendant's bond. However, before the sentencing hearing, Radakovich withdrew as

defense counsel and attorney Steven Decker entered his appearance on defendant's behalf. Decker filed a motion to enforce the plea agreement, alleging the State agreed to a 10-year sentencing cap which was not disclosed to the court on the day defendant entered his guilty plea.

¶ 6 During the hearing on the motion to enforce the plea agreement, Radakovich testified that the State originally offered defendant 18 years' imprisonment in exchange for a guilty plea on both charges. Radakovich responded to this offer by requesting an agreed sentence of 10 years. The State counter-offered 15 years' imprisonment in case No. 07-CF-188 and offered to dismiss case No. 07-CF-140, but this agreement for a 15-year sentence was not finalized. Thereafter, Radakovich advised the State his client was willing to cooperate with law enforcement by providing information about other criminal activity in Whiteside County.

¶ 7 According to Radakovich, defendant later cooperated with law enforcement, hoping he might receive a lower sentence in exchange for the information he provided to the State. Consequently, Radakovich continued negotiations with the State's Attorney by requesting a decrease in the amount of defendant's bond and the possibility of a 10-year sentencing cap. Although Radakovich and the State exchanged letters discussing the plea negotiations, neither letter mentioned a 10-year sentencing cap. Radakovich claimed he did not document the sentencing cap in the letter to the State because stand-in counsel, Murray, would see the letter, and discover defendant was cooperating with the police.

¶ 8 On cross-examination, Radakovich testified he did not recall the prosecutor ever saying he agreed to a 10-year sentencing cap. He also stated he provided Murray minimal information regarding the contents of the plea agreement knowing Murray might represent one of the individuals charged with criminal acts based on information defendant provided to law

enforcement.

¶ 9 The State moved for a directed finding, arguing Radakovich's testimony did not establish a 10-year cap was ever in place. The court agreed with the State. After viewing defendant's evidence in a light most favorable to defendant, the court found the defendant failed to establish the State agreed to a 10-year sentencing cap and denied the motion to enforce the purported plea agreement. The court sentenced defendant to serve 25 years' imprisonment.

¶ 10 Defendant filed a motion to vacate the directed finding in favor of the State and a motion to reconsider sentence or vacate his guilty plea. At the hearing on defendant's motions, Murray testified that Radakovich did not mention the existence of a 10-year sentencing cap but rather, informed Murray that defendant would be entering an open plea and in return, the State would be dismissing the other pending case and agreeing to reduce defendant's bond. Murray then had a conversation with defendant prior to the plea hearing and discussed that defendant would be entering an open plea. Attorney Murray understood defendant's sentencing would be postponed 60 days so he could cooperate with law enforcement, and his level of cooperation would affect the ultimate sentencing recommendation from the State.

¶ 11 Defendant also testified at the hearing. He claimed Radakovich informed him the day before the plea hearing that he had successfully negotiated a 10-year sentencing cap and defendant believed a 10-year cap was in place when he pled guilty. Defendant admitted telling the court he was not promised anything other than the terms of the plea agreement, which did not include a 10-year cap. However, defendant claimed he did not mention the cap because his attorneys were handling that and stated: "I just do what I always do when I plead guilty, no, no, yes, yes, no, because the agreement already be[.]" On cross-examination, defendant agreed he

was in court during the plea hearing and heard the prosecutor set forth the terms of the plea before telling the court he was not promised anything other than those terms.

¶ 12 When ruling, the court stated it had credible testimony from Murray that he discussed the plea terms with defendant prior to the plea hearing. The court also noted it did not find defendant's testimony credible concerning the existence of a 10-year sentencing cap. The court found that a 10-year sentencing cap never existed and denied defendant's motions. Defendant appeals.

¶ 13 ANALYSIS

¶ 14 I. Ineffective Assistance of Counsel

¶ 15 Defendant first argues he received ineffective assistance of counsel because trial counsel caused him to believe there was a 10-year sentencing cap but did not inform substitute counsel of this alleged 10-year cap. To establish ineffective assistance of counsel, a defendant must show: (1) counsel's representation fell below an objective standard of reasonableness; and (2) there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different. *People v. Albanese*, 104 Ill. 2d 504, 525 (1984). Defendant must satisfy both prongs to prevail on a claim of ineffective assistance of counsel; however, if defendant did not suffer prejudice, a court need not determine whether counsel's performance was deficient. *Id*.

¶ 16 Here, defendant failed to establish a 10-year sentencing cap ever existed. Consequently, defendant did not establish prejudice resulted when defendant entered his guilty plea based on his purported reliance on a 10-year cap which did not exist. Here, the trial court made credibility determinations and concluded the plea deal never included a 10-year sentencing cap. We cannot

say the court's determination was manifestly erroneous. See *People v. Rovito*, 327 Ill. App. 3d 164 (2001). In fact, the record reveals the trial court specifically asked defendant whether anyone had promised him anything other than the terms of the plea agreement as disclosed in open court. Defendant responded, "No, sir." Thus, defendant's own statement negates the possibility that defendant relied on trial counsel's alleged promise that a 10-year sentencing cap was in place at the time of his guilty plea. See *People v. Torres*, 228 Ill. 2d 382 (2008).

¶ 17 II. Motion to Withdraw Plea

¶ 18 Defendant next argues the trial court abused its discretion when it refused to allow him to withdraw his guilty plea because his plea was not knowingly and voluntarily entered since defendant relied on defense counsel's statement a 10-year sentencing cap was part of the agreement. A trial court's decision whether to allow a defendant to withdraw a guilty plea is within the sound discretion of the trial court and will not be disturbed unless the decision is an abuse of discretion. *People v. Davis*, 145 Ill. 2d 240, 244 (1991).

¶ 19 First, Murray testified he informed defendant of the terms of his plea agreement prior to the plea hearing and these terms did not include a sentencing cap. Second, the record reveals that during the hearing, and in defendant's presence, the prosecutor read the terms of the negotiated agreement which did not include a sentencing cap. Finally, defendant stated in open court he was not relying on any promises outside of the terms of the plea agreement recited to the court that day. Consequently, we conclude the trial court did not abuse its discretion when it refused to allow defendant to withdraw his guilty plea.

¶ 20 III. Benefit of Bargain

¶ 21 Defendant next argues he was denied the benefit of the bargain he made with the State

with respect to the 10-year sentencing cap. The existence of a plea agreement and its terms and conditions are questions of fact which the trier of fact must determine. *People v. Navarroli*, 121 Ill. 2d 516, 521 (1988). A court's determination will not be disturbed unless it was contrary to the manifest weight of the evidence. *Id*. Here, the court concluded that a 10-year sentencing cap was never in place. As noted above, that determination is supported by the record in light of the court's credibility determinations and was not manifestly erroneous.

¶ 22 IV. Motion for Directed Finding

¶ 23 Finally, defendant claims his due process rights were violated because a trial court does not have authority to entertain a motion for directed finding during a motion hearing. The case law provides that if a moving party has not established the basis for a motion, there is no need for the court to proceed following the close of the movant's evidence, and the court may grant a directed finding in favor of the non-movant. See *People v. Brown*, 2012 IL App (1st) 091940 (where the trial court granted the State's motion for directed finding during a hearing on the defendant's motion to suppress). Thus, we conclude defendant's due process rights were not violated when the court denied his motion to vacate the directed finding.

¶ 24 CONCLUSION

¶ 25 The judgment of the circuit court of Whiteside County is affirmed.

¶ 26 Affirmed.