



defendant's friend, Jeremy Brotherton. An autopsy report showed that Brotherton died as a result of ingesting a combination of alcohol, Oxycontin, and other drugs. The defendant admitted to police that he supplied Brotherton with the Oxycontin.

¶ 4 The defendant pled guilty to drug-induced homicide in exchange for the State's agreement to drop the charge of unlawful delivery. At a guilty plea hearing, the court admonished the defendant that by pleading guilty, he was giving up the right to a trial at which the State would be required to prove him guilty beyond a reasonable doubt. The court further admonished the defendant that he was giving up the right to confront and cross-examine the State's witnesses and the right to present a defense. The court asked if the defendant understood this, and the defendant indicated that he did. The court asked if anyone had coerced the defendant's guilty plea or promised him anything in exchange for his plea other than the State's promise to drop the charge of unlawful delivery. The defendant said "no." The court found the defendant's plea was knowing and voluntary. The State then presented the factual basis for the plea, and the court accepted the plea.

¶ 5 Prior to sentencing, the defendant filed a motion to withdraw his guilty plea. However, he withdrew his motion at the beginning of the sentencing hearing because it was premature. He informed the court that he intended to refile it after sentencing. The court sentenced the defendant to 12 years in prison. He subsequently filed two amended motions to withdraw his guilty plea. In his second amended motion, the defendant alleged that he "did not understand his attorney's explanation of the consequences of his plea of guilty" in that he believed that he could withdraw his plea for any reason within 30 days. The defendant further alleged that his attorney was operating under a conflict of interest because he was engaged to the daughter of the arresting officer.

¶ 6 The court held a hearing on the defendant's motion to withdraw his plea. The defendant testified that at the time he pled guilty, he believed he could withdraw his plea within 30 days. He stated that the trial judge gave him this understanding. Counsel asked the defendant, "[A]re you saying that [you believed that] at your discretion you could withdraw the plea?" The defendant replied, "The way I understood it, yes, sir." The defendant went on to testify that he had a defense he wished to present, and that he learned that his attorney's wife was the daughter of the officer who arrested him.

¶ 7 The defendant's attorney also testified. Counsel stated: "I remember a conversation in regards to his appeal rights and his ability to file a motion to withdraw his plea. In that conversation, I alluded to him it had to be done for cause only." Counsel admitted, however, that he did not remember the precise words he used in advising the defendant about his right to file a motion to withdraw his plea. Counsel further testified that he normally asks his clients if they understand what he has explained to them.

¶ 8 Counsel also testified that he specifically told the defendant that he was engaged to the daughter of the arresting officer. He testified that he specifically informed the defendant of this and asked the defendant if he felt uncomfortable with his representation as a result. The defendant told him that it was not a problem. Counsel further testified that his fiancée was estranged from her father and that he did not discuss the defendant's case with him.

¶ 9 The court denied the defendant's motion to withdraw his plea. This appeal followed.

¶ 10 The defendant first argues that the trial court abused its discretion in denying his motion to withdraw his plea. He argues that (1) the plea was involuntary due to

his misapprehension of law and (2) he had a valid defense. We do not agree.

¶ 11 In considering a defendant's motion to withdraw his guilty plea, a trial court should grant the request and vacate the plea if it "was entered on a misapprehension of the facts or of the law," if the defendant "has a defense worthy of consideration by a jury," or if "the ends of justice will be better served" by allowing the defendant to withdraw the plea. *People v. Morreale*, 412 Ill. 528, 531-32, 107 N.E.2d 721, 723 (1952). A misapprehension of the law, however, does not provide a sufficient basis to withdraw a guilty plea unless there is "substantial objective proof" showing that the defendant's misapprehension was reasonably justified. *People v. Davis*, 145 Ill. 2d 240, 244, 582 N.E.2d 714, 716 (1991). The defendant has the burden of showing that circumstances existed at the time of the plea that made his mistake objectively reasonable. *Davis*, 145 Ill. 2d at 244, 582 N.E.2d at 716. On appeal, we will reverse only if the trial court abused its discretion. *Davis*, 145 Ill. 2d at 244, 582 N.E.2d at 716.

¶ 12 Here, the defendant alleged in his motion only that he "did not understand" his attorney's explanation of his rights; he did *not* allege that his attorney misinformed him. In an affidavit supporting his motion, the defendant stated that he did not understand the consequences of his plea because, among other reasons, he believed that his attorney did not explain those consequences. At the hearing on the defendant's motion, counsel testified that he *did* explain to the defendant that he would have the right to withdraw his guilty plea only if he had grounds to do so. The defendant's testimony did not contradict this. He testified—twice—that the court led him to believe that he could withdraw his plea solely at his discretion. The plea hearing transcript refutes this claim. In short, the record contains no evidence that the defendant was misinformed or improperly advised as to the consequences of his plea.

¶ 13 Moreover, reversal would be required only if the defendant was prejudiced by his misunderstanding. See *Davis*, 145 Ill. 2d at 250, 582 N.E.2d at 719. In that regard, the defendant likens this case to *Davis*. We find *Davis* distinguishable.

¶ 14 There, the defendant pled guilty to a charge of burglary in exchange for the State's agreement to drop an additional charge of residential burglary. *Davis*, 145 Ill. 2d at 243, 582 N.E.2d at 715. He made this plea agreement so that he could be considered for the Treatment Alternatives to Street Crimes (TASC) program. *Davis*, 145 Ill. 2d at 244, 582 N.E.2d at 716. He would be ineligible for the program with a conviction for the more serious offense of residential burglary. *Davis*, 145 Ill. 2d at 243, 582 N.E.2d at 716. Defense counsel specifically informed the defendant that he would be eligible for TASC without a residential burglary conviction. *Davis*, 145 Ill. 2d at 245, 582 N.E.2d at 716. However, after the defendant's plea was entered but before sentencing, a TASC employee informed counsel that due to the defendant's prior criminal record, he would not be eligible for the TASC program. *Davis*, 145 Ill. 2d at 243, 582 N.E.2d at 716. Thus, counsel sought to withdraw the defendant's plea. The trial court denied this request.

¶ 15 On appeal, the supreme court noted that there was no dispute that eligibility for the TASC program was the defendant's prime purpose for entering into the plea agreement. *Davis*, 145 Ill. 2d at 245, 582 N.E.2d at 716. Even so, the court found that the defendant's misapprehension regarding his eligibility for the TASC program, standing alone, was not sufficient to warrant reversal. *Davis*, 145 Ill. 2d at 251, 582 N.E.2d at 719. However, the supreme court found that the trial court erred in refusing to allow the defendant to withdraw his plea due to a combination of his misunderstanding regarding TASC eligibility and improper admonishments from the

court related to the possible sentence the defendant could receive. *Davis*, 145 Ill. 2d at 251, 582 N.E.2d at 719. Specifically, the trial court incorrectly informed the defendant that he could be sentenced to probation for the charge of burglary. *Davis*, 145 Ill. 2d at 247, 582 N.E.2d at 717. The supreme court explained that because of this incorrect admonishment and the incorrect information about TASC eligibility, the defendant most likely did not understand the range of sentences that could be imposed on him pursuant to his guilty plea. *Davis*, 145 Ill. 2d at 248, 582 N.E.2d at 718. As a result, the court further explained, he pled guilty without even attempting to negotiate a shorter sentence. "Because of this prejudicial effect," the court reversed the trial court's decision. *Davis*, 145 Ill. 2d at 250, 582 N.E.2d at 719.

¶ 16 In the instant case, by contrast, the defendant was properly advised of the possible sentence he might receive. He contends only that the requirements for seeking to withdraw his plea were not adequately explained to him. As we have already concluded, the record does not contain evidence to establish that this misapprehension was objectively reasonable. In addition, however, it is difficult to see how a better understanding of these requirements would factor into his decision to plead guilty, and the defendant has not alleged any particular reasons that it would impact that decision. Thus, we do not believe the defendant met his burden of demonstrating a basis to withdraw his plea.

¶ 17 We are also not persuaded by the defendant's argument that he had a viable defense to present to the jury. He points to the autopsy report, which stated that the cause of Brotherton's death was toxicity from the ingestion of multiple drugs, including the Oxycontin. The defendant argues that this evidence refutes the State's claim that the Oxycontin he supplied to Brotherton proximately caused Brotherton's death. See 720 ILCS 5/9-3.3(a) (West 2008). We disagree. The forensic pathologist

who performed the autopsy specifically opined that without the Oxycontin, Brotherton would not have died. In order to sustain a conviction for drug-induced homicide, the State need only prove that the illegal drug delivered by the defendant was a proximate cause of the victim's death; it does not need to prove that the drug was the sole proximate cause. *People v. Boand*, 362 Ill. App. 3d 106, 135, 838 N.E.2d 367, 395 (2005).

¶ 18 Finally, the defendant contends that his sentence of 12 years was excessive. He argues that the court failed to take into account his rehabilitative potential. He further argues that the sentence should have been lighter because the evidence showed that he did not intend for Brotherton to die and because Brotherton "induced" the defendant to provide him with Oxycontin. We disagree.

¶ 19 The trial court is entitled to "great deference" in determining the appropriate sentence to impose. *People v. Perkins*, 408 Ill. App. 3d 752, 762, 945 N.E.2d 1228, 1238 (2011). We will only disturb a sentence if the court has abused its considerable discretion. *Perkins*, 408 Ill. App. 3d at 762, 945 N.E.2d at 1238. The court has no obligation to expressly list the mitigating factors it considers. *Perkins*, 408 Ill. App. 3d at 763, 945 N.E.2d at 1238. As long as the court does not consider any improper aggravating factors or ignore mitigating factors, the court has the discretion to impose a sentence within the statutorily prescribed range. *Perkins*, 408 Ill. App. 3d at 762, 945 N.E.2d at 1238. There is a rebuttable presumption that a sentence within this range is proper. *People v. Chambers*, 258 Ill. App. 3d 73, 92, 629 N.E.2d 606, 620 (1994).

¶ 20 The sentencing range for drug-induced homicide is 6 to 30 years. See 720 ILCS 5/9-3.3(b) (West 2008). The defendant was sentenced to 12 years, which is toward the lower end of that range. Contrary to the defendant's contention, the court

specifically considered the fact that the defendant did not intend his friend to die as a factor in mitigation. The court also considered the defendant's remorse to be a mitigating factor. However, the court expressly rejected the defendant's contention that Brotherton "induced" him to deliver the Oxycontin simply because he requested the drug. In so finding, the court noted that the defendant should have been aware that the ingestion of Oxycontin could have had serious consequences for Brotherton. The court considered the defendant's prior criminal history as a factor in aggravation. The defendant, who was 26 years old at the time of his sentencing hearing, already had two felony convictions.

¶ 21 For the reasons stated, we affirm the court's judgment.

¶ 22 Affirmed.