



State Appellate Defender's motion to withdraw and the attached memorandum. We have examined the entire record on appeal and find no error or potential grounds for appeal. For the following reasons, we now grant the State Appellate Defender's motion to withdraw as counsel on appeal and affirm the judgment of the circuit court of Madison County.

¶ 3

### BACKGROUND

¶ 4 The defendant was originally charged with solicitation of murder for hire pursuant to section 8-1.2 of the Criminal Code of 1961 (720 ILCS 5/8-1.2 (West 2008)). In exchange for the reduced charge of attempt (solicitation of murder for hire) pursuant to section 8-4(a) of the Criminal Code of 1961 (720 ILCS 5/8-4(a) (West 2008)), the defendant entered an open plea of guilty. The sentencing range of solicitation of murder for hire, a Class X felony, is 20 to 40 years (720 ILCS 5/8-1.2 (West 2008)), while the sentencing range for attempt (solicitation of murder for hire), a Class 1 felony, is between 4 and 15 years (730 ILCS 5/5-4.5-30 (West 2008)) or probation (730 ILCS 5/5-4.5-15(a)(1) (West 2008)). The defendant and the State subsequently agreed to a five-year sentence in the Illinois Department of Corrections, and the court accordingly sentenced the defendant to five years' imprisonment. The defendant filed a *pro se* motion, and later, the defendant's counsel filed an amended motion to withdraw her guilty plea and vacate her sentence. The court denied the defendant's motion.

¶ 5 In her amended motion, the defendant claimed that she did not knowingly, intelligently, or voluntarily waive her right to a jury trial due to extreme emotional distress related to jail conditions, along with misrepresentations by her attorney, nor did she fully understand or comprehend the admonishments of the court pursuant to Illinois Supreme Court Rule 402 (eff. July 1, 1997) when she pleaded guilty. She also made several arguments regarding her sentence. We will now address the State Appellate Defender's arguments that an appeal in this case would be without merit.

¶ 6

Knowing, Intelligent, and Voluntary Waiver

¶ 7 "A defendant does not have an absolute right to withdraw his guilty plea." *People v. Manning*, 227 Ill. 2d 403, 412 (2008) (citing *People v. Artale*, 244 Ill. App. 3d 469, 475 (1993)). "The decision to grant or deny a motion to withdraw a guilty plea rests in the sound discretion of the circuit court and, as such, is reviewed for abuse of discretion." *People v. Baez*, 241 Ill. 2d 44, 109-10 (2011) (citing *People v. Delvillar*, 235 Ill. 2d 507, 519 (2009); *People v. Walston*, 38 Ill. 2d 39, 42 (1967)). "For a guilty plea to be constitutionally valid, there must be an affirmative showing that the plea was made voluntarily and intelligently." *People v. Urr*, 321 Ill. App. 3d 544, 547 (2001) (citing *People v. St. Pierre*, 146 Ill. 2d 494, 506 (1992)). This requirement is encompassed by Rule 402, "which requires the court to admonish defendant on the nature of the crime charged, the sentencing range, and the rights defendant forfeits as a result of pleading guilty." *Id.* (citing Ill. S. Ct. R. 402 (eff. July 1, 1997)). "A defendant may challenge the constitutionality of his guilty plea either by claiming that he did not receive the benefit of the bargain he made with the State or by alleging that the plea of guilty was not made voluntarily or with full knowledge of the consequences." *Manning*, 227 Ill. 2d at 412 (citing *People v. Whitfield*, 217 Ill. 2d 177, 183-84 (2005)). However, with regard to an open plea, "defendant must demonstrate that his plea was not knowing and voluntary." *Id.*; see also *People v. DeRosa*, 396 Ill. App. 3d 769, 774-75 (2009) (citing *People v. Linder*, 186 Ill. 2d 67, 69 (1999)).

¶ 8 In this case, as the Appellate Defender points out, it is clear from the record that the circuit court gave all necessary admonishments pursuant to Rule 402. While the defendant originally entered an open guilty plea, she later reached an agreement with the State for a sentence of five years. In effect, this scenario is a fully negotiated plea, and therefore, the defendant may challenge her plea on the basis that she did not receive the benefit of the bargain she made with the State; however, she may not challenge her sentence as otherwise

excessive. In the defendant's motion, she seemed to argue that she had agreed to something other than five years in prison; however, we agree with the Appellate Defender that clearly, the defendant agreed to a term of five years in prison. The defendant's attorney advised the court as such, and the court asked the defendant if that was her understanding. The defendant advised the court that she had negotiated for the five-year sentence and that she did not have questions. Clearly, the defendant agreed to her sentence.

¶ 9 With regard to jail conditions, the "personal discomfort" of a defendant will "not invalidate his guilty plea provided the plea was otherwise intelligent and voluntary." *People v. St. Pierre*, 146 Ill. 2d 494, 507 (1992). In order to demonstrate that a guilty plea was not voluntarily entered into due to jailhouse conditions, a defendant must show a "specific instance of abuse, either physical or mental, or coercion which would have caused him to plead guilty." *Id.* With regard to whether a defendant is competent to plead guilty, the defendant "must be able (1) to understand the nature and purpose of the proceedings against him and (2) to assist in preparing his defense." *People v. Bleitner*, 199 Ill. App. 3d 146, 151 (1990) (citing Ill. Rev. Stat. 1987, ch. 38, ¶ 104-10).

¶ 10 In this case, the defendant testified that, at the time she pleaded guilty, she had not been "able to shower for several days" and that she "was told that if [she] cooperated, that basically [she] would be awarded to IDOC where [she] would have better conditions." The defendant further testified that she was on "psych meds." However, as the Appellate Defender points out, the defendant could not name the drugs she had allegedly been taking, and nothing in the record indicates that she had been on medication. Additionally, the defendant's original trial counsel, Ron Williams, testified that the defendant asked "good" and "intelligent" questions during their communications. Also, the defendant told the judge that she understood his admonishments. In short, there is nothing in the record to support the defendant's allegation that she was forced to take medication, or that she was suffering

"extreme emotional distress" as a result of not showering, or that either of these conditions rendered her guilty plea unintentional, unknowing, or involuntary. The fact that the defendant asked her attorney intelligent questions indicates that she was capable of understanding the nature and purpose of the proceedings and was able to assist her attorney in preparing for plea bargain negotiations despite allegedly being on medication or not being permitted to shower. Therefore, the defendant's arguments are without merit.

¶ 11 The defendant also contends in her amended motion that her attorney made the following inaccurate representations to her: (1) that she was pleading to a Class 3 felony rather than a Class 1 felony; (2) that good time was available to her "in the nature of additional credit for schooling and other activities in the Department of Corrections"; (3) that she would be released no later than August of 2010"; and (4) that she would possibly receive probation or be sent to boot camp rather than being imprisoned.

¶ 12 "Whether defendant's plea was knowingly and voluntarily made 'depends on whether the defendant had effective assistance of counsel.' " *Manning*, 227 Ill. 2d at 412 (quoting *People v. Pugh*, 157 Ill. 2d 1, 14 (1993) (citing *People v. Correa*, 108 Ill. 2d 541, 549 (1985))). Our supreme court has adopted the two-part test from *Strickland v. Washington* to determine whether counsel's assistance was effective. *Id.* (citing *People v. Jones*, 144 Ill. 2d 242, 253-54 (1991); *Strickland v. Washington*, 466 U.S. 668 (1984)). Under that test, a defendant must show " 'both that his attorney's performance was deficient and that the defendant suffered prejudice as a result.' " *Id.* (quoting *Pugh*, 157 Ill. 2d at 14). With regard to the statements of defense counsel, "[w]here the plea of guilty was entered \*\*\* in consequence of misrepresentations by counsel \*\*\* the court should permit the withdrawal of the plea of guilty and allow the accused to plead not guilty." (Emphasis and internal quotation marks omitted.) *Id.* (quoting *People v. Davis*, 145 Ill. 2d 240, 244 (1991) (quoting *People v. Morreale*, 412 Ill. 528, 531-32 (1952))). However, " 'the defendant bears the

burden of demonstrating any alleged \*\*\* misrepresentation.' " *People v. Fernandez*, 222 Ill. App. 3d 80, 85 (1991) (quoting *People v. Kraus*, 122 Ill. App. 3d 882, 888 (1984)). Regarding good-time credit, it "lies within the discretion of the Department of Corrections and rests upon factors occurring after the defendant's incarceration that cannot be foreseen at the time of conviction and sentence," and as such, counsel's statements regarding the possibility of early release "must be regarded as a prediction only, rather than a promise that could be fulfilled as part of the plea agreement." *People v. Corby*, 139 Ill. App. 3d 214, 219 (1985). "Thus, a guilty plea induced by an unfulfilled promise of leniency is involuntary and therefore void; however, a guilty plea made in reliance upon advice of counsel estimating a sentence to be expected is a voluntary plea." *Id.* at 218 (citing *People v. Willis*, 50 Ill. App. 3d 498 (1977)).

¶ 13 With regard to general misapprehensions of a defendant, "[i]n the absence of substantial objective proof showing that a defendant's mistaken impressions were reasonably justified, subjective impressions alone are not sufficient grounds on which to vacate a guilty plea." *People v. Davis*, 145 Ill. 2d 240, 244 (1991). "A misapprehension as to sentencing alternatives may render the guilty plea involuntary if the defendant was actually unaware of the possible punishment," but if "a defendant has been admonished thoroughly, a guilty plea is not revocable merely because the defendant subjectively believed that he or she would receive a certain sentence but did not," especially "where there is no reasonable justification for the defendant's mistaken subjective impression." (Internal quotation marks omitted.) *Fernandez*, 222 Ill. App. 3d at 85 (quoting *Kraus*, 122 Ill. App. 3d at 888). "Further, the burden is on the defendant to establish that the circumstances existing at the time of the plea, judged by objective standards, justified the mistaken impression." *Davis*, 145 Ill. 2d at 244 (citing *People v. Hale*, 82 Ill. 2d 172, 176 (1980)).

¶ 14 In this case, the Appellate Defender correctly points out that the record reflects that

the court admonished the defendant that she was pleading guilty to a Class 1 felony. The record clearly reflects that the defendant was admonished regarding the sentencing range, and she advised the court that she understood this sentencing range. Additionally, at the defendant's sentencing, she twice advised the court that she was agreeing to a five-year sentence in the Illinois Department of Corrections. The defendant's counsel, Mr. Williams, testified that he had not told the defendant that she would be out by August of 2010, and that he could not make such a promise based on his experience. With regard to the possibility of probation and/or boot camp, Mr. Williams testified that he had discussed these potential outcomes with the defendant, but that once the five-year agreement had been reached, probation and boot camp were no longer relevant. It is clear from the record that the defendant's arguments with regard to counsel's statements are without merit. The defendant was aware of the possible sentencing range when she pled guilty, and she agreed to five years' imprisonment. With regard to counsel's performance, negotiating a 5-year deal for a charge that carries a potential 15-year sentence after negotiating a reduced charge in return for an open guilty plea is not deficient representation. Without credible evidence that the defendant was misled by counsel, there is no substantial objective proof showing that the defendant's mistaken impressions were reasonably justified. Therefore, the court did not abuse its discretion, and any argument related to counsel's statements or the defendant's misapprehensions would be without merit.

¶ 15

#### CONCLUSION

¶ 16 The motion of the State Appellate Defender is granted, and the judgment of the circuit court of Madison County is affirmed.

¶ 17 Motion granted; judgment affirmed.