

No. 1-11-1606

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 19353
	)	
VICTOR LONG,	)	Honorable
	)	Lawrence E. Flood,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE REYES delivered the judgment of the court.  
Justices Hall and Gordon concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defense attorney who represented defendant in his unsuccessful motion to withdraw his guilty plea did not have a potential conflict of interest requiring new counsel for defendant and a new hearing on his motion.

¶ 2 Defendant Victor Long pled guilty to the offense of possession of less than 15 grams of a controlled substance (3.4 grams of cocaine) and was sentenced to two years' felony probation.

He has appealed after unsuccessfully moving to withdraw his plea. Defendant contends that his trial counsel should have withdrawn because she had a potential conflict of interest and therefore a new attorney should be appointed to represent him in a new hearing on his motion to withdraw

his guilty plea. This potential conflict of interest is based upon counsel's representation of defendant on the guilty plea at a time when defendant alleges he was not taking his bipolar disorder medication and therefore did not understand the guilty plea proceedings.

¶ 3 Defendant's guilty plea occurred on November 16, 2010. The prosecution informed the court that a plea agreement had been reached, in which defendant pled guilty to possession of less than 15 grams of a controlled substance in return for the prosecution's recommendation of two years' probation. Defendant responded "yes" or "yes, sir" to the following questions by the court: did he wish to withdraw his plea of not guilty and enter a plea of guilty; did he understand that he was giving up the right to trial by jury, where 12 people chosen to hear the evidence would make a determination of his guilt or innocence; did he sign a jury waiver and did he understand that by signing that document he was formally waiving his right to a trial by jury; did he understand that he was giving up his right to a trial where he would have a right to see and hear witnesses testify against him, present any evidence he had or remain silent, not have this silence considered against him, and require the prosecution to prove him guilty beyond a reasonable doubt; did he understand that he was being charged with a class 4 felony, for which he could receive one to three years in prison with one year of mandatory supervised release, a fine of up to \$25,000 and up to 30 months' probation or conditional discharge. Defendant responded "No, sir" when asked if anyone had threatened him or "promised [him] to plead guilty." He responded "Yes, sir" when asked if he was pleading guilty of his own free will and if he understood that the court was not bound by the plea agreement.

¶ 4 As a factual basis for the plea, the prosecution stated that at 10 p.m. on October 8, 2010, Chicago police officers arrested defendant based upon a misdemeanor warrant. They searched him and found three small plastic bags of a substance later determined to contain 3.4 grams of cocaine. Upon his arrest, defendant denied presently taking any medication, denied being under

the influence of any drugs or alcohol, and denied having any serious medical or mental problems. The court found defendant understood the nature of the charges against him, the possible penalties, and his rights under the law. The court also found defendant had entered his plea freely and voluntarily and that there was a factual basis for the plea. Accordingly, the court accepted the plea and found defendant guilty of possession of less than 15 grams of a controlled substance. When the court asked defendant if there was anything he wished to say, defendant responded that he just wanted to go home to see his son. The court then sentenced him to two years' probation.

¶ 5 On December 13, 2010, defendant's counsel filed a motion to withdraw his plea. On January 20, 2011, she informed the court defendant had brought her "the evidence he was supposed to bring" in order to support the motion, but she needed a continuance in order to subpoena a report. Defendant's counsel subsequently filed an amended motion to withdraw his plea, stating that he had been incarcerated for 40 days before entering his plea and during that time he had not received the "psychiatric medications" he needed. As a result, defendant did not fully understand the ramifications of his plea. He also believed that he was unable to properly convey important information about his case and could not communicate effectively with counsel. The motion stated that defendant's mental state was impaired by his lack of medication and that he would not have pled guilty if he had been properly medicated. In an affidavit supporting that motion, defendant stated that prior to his arrest he had been diagnosed with bipolar disorder and short-term memory loss, for which he took regular doses of risperidone, benztropine, and sertraline. When he was unable to take this medication, his mental state was "substantially different" from his normal one. As soon as he was released from jail, he began to take his medication and began to be able to think like himself again. He immediately sought to have his guilty plea withdrawn. Defendant stated that if he had been given his medication, he did

not believe he would have pled guilty. He also stated that he did not remember his guilty plea well, but he did remember that he thought an African-American woman standing next to him at the time was his attorney. He subsequently learned that she was not his attorney.

¶ 6 In argument on the amended motion to withdraw defendant's guilty plea, defense counsel stated that when she spoke with defendant, he did not remember the day of his plea "correctly." He did not remember that she was there as his attorney and instead thought a probation officer was his attorney because she was standing beside him during his plea. Defendant told defense counsel that without his medication he had trouble remembering from day to day. He also told her that he did not believe he would have pled guilty if he had been on his medication. The court denied defendant's motion, finding that he had answered all of the court's questions clearly at the plea hearing. The court stated that if there had been a problem, defense counsel, as an officer of the court, would have informed the court. The court also stated that if there had been a problem, the court would not have accepted the plea.

¶ 7 Defendant seeks a new hearing on his motion to withdraw his guilty plea, with representation by new counsel. He notes that defense counsel presented no witnesses at the hearing. He alleges that defense counsel had a potential conflict of interest because a full inquiry concerning defendant's mental condition at the time of the hearing might have revealed that defense counsel had provided ineffective representation at the hearing. This is because it might develop that defense counsel knew, or should have known, that defendant was not fit to plead guilty without his medication. In addition, it might be revealed defense counsel should have withdrawn because of a need for her testimony concerning defendant's mental condition at the time of his plea.

¶ 8 A criminal defendant has a sixth amendment right to effective assistance of counsel, which includes conflict-free representation. *People v. Morales*, 209 Ill. 2d 340, 345-46 (2004).

There are three types of *per se* conflicts, where no proof of harm from the conflict is required. These include instances where counsel has a prior or current relationship with the victim or the prosecution, where counsel also represented a defense witness, and where counsel was formerly a prosecutor personally involved in the defendant's prosecution. *People v. Taylor*, 237 Ill. 2d 356, 374-75 (2010). If the conflict is not one of these three types, a defendant must show that the conflict actually caused a specific defect in counsel's representation. *Morales*, 209 Ill. 2d at 348-49. A defendant cannot base his claim upon mere speculation. *Morales*, 209 Ill. 2d at 349.

¶ 9 Defendant asserts that defense counsel had a potential conflict of interest where a full inquiry "could reveal" that counsel provided ineffective assistance of counsel. We find this assertion is merely speculative. Defendant implies that he should have been called to testify. But the use of an affidavit from defendant prevented defendant from being subject to cross-examination. Defendant also asserts that defense counsel "could have anticipated" that she might have to testify concerning her awareness defendant was not competent to enter a guilty plea, a situation which would require her to withdraw as counsel. Nothing in the record supports the assertion that defense counsel was aware of defendant's alleged lack of competence at the time he entered a guilty plea. Defendant is unable to cite to a specific defect in defense counsel's representation that was caused by what he speculates may have been a conflict of interest. In addition, the trial court had also presided over defendant's guilty plea, where the court engaged in colloquy with defendant concerning his understanding of the rights he was waiving and the consequences of his plea. Defendant's answer to every question posed to him by the court indicated that he understood the nature of the proceedings.

¶ 10 Defendant cites to *People v. Ball*, 50 Ill. App. 3d 36 (1977), where the reviewing court granted the defendant a new attorney and a new hearing on his motion to withdraw his guilty plea after the same attorney represented defendant at his guilty plea hearing and at his motion to

withdraw the guilty plea. But the facts in *Ball* are very different from those in this case. At the guilty plea hearing in *Ball*, there was evidence that the defendant had been in mental institutions. *Ball*, 50 Ill. App. 3d at 38. For this reason the trial court asked defense counsel if he believed the defendant was competent and he replied that defendant was. *Id.* Additionally, after the guilty plea hearing, the court reappointed the defendant's counsel to represent him on his motion to withdraw his plea. *Id.* During the hearing on the defendant's motion to withdraw his plea, his counsel stated that he was uncomfortable in again representing defendant since he had expressed the opinion that he was competent at the guilty plea hearing. *Id.* In the case before us, there was no question raised concerning defendant's competence at his guilty plea hearing and defense counsel never expressed doubts about her ability to represent defendant at the hearing on his motion to withdraw his plea.

¶ 11 Defendant also cites to *People v. Friend*, 341 Ill. App. 3d 139 (2003), where defendant was granted a new hearing on his motion to withdraw a plea because his attorney had a conflict of interest which should have caused counsel to withdraw from the case. But in *Friend*, defendant specifically alleged that his counsel had blackmailed him and had charged him \$10,000 for motions he never filed, leaving defendant with no money and no choice but to plead guilty. *Friend*, 341 Ill. App. 3d at 141-43. Here there are no allegations against defense counsel by defendant, only his speculation on appeal that further investigation might have uncovered a conflict.

¶ 12 For all of these reasons, we find that defendant has not established a conflict of interest interfering with his trial counsel's ability to represent him at his motion to withdraw his guilty plea. Accordingly, we affirm defendant's conviction and sentence.

¶ 13 Affirmed.