

2017 IL App (1st) 143894-U

No. 1-14-3894

Order filed June 19, 2017

First Division

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

| | | |
|--------------------------------------|---|-----------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | Cook County. |
| |) | |
| v. |) | No. 14 DV 73317 |
| |) | |
| CALVIN LEMONS, |) | Honorable |
| |) | James Patrick Murphy, |
| Defendant-Appellant. |) | Judge, presiding. |

JUSTICE HARRIS delivered the judgment of the court.
Justices Simon and Mikva concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion when it denied defendant's motion to withdraw his guilty plea.

¶ 2 Pursuant to a negotiated plea agreement, defendant Calvin Lemons, pled guilty to one count of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2014)) and was sentenced to 18 months of conditional discharge. Thereafter, defendant filed a postplea "Motion to Withdraw

Plea of Guilty and Vacate Judgment” and an amended postplea “Motion to Vacate Plea of Guilty.” The trial court denied both motions. On appeal, defendant contends that, in the interest of justice, we should reverse the trial court’s order denying his motion to withdraw his guilty plea because defendant presented evidence that casts doubt on his guilt.

¶ 3 On April 13, 2014, defendant was charged with one count of domestic battery in that he “without legal justification knowingly caused bodily harm to Joann Harris, a household member, girlfriend, of defendant in that defendant grabbed Joann Harris by the hair and threw her to the ground and then dragged her causing redness and swelling to her knees and elbows.” On April 29, 2014, the assistant Public Defender representing defendant informed the trial court that the parties had a negotiated plea agreement.

¶ 4 Thereafter, the trial court read defendant the charge, and asked him if he understood it. Defendant responded, “I understand the nature of the charge, Your Honor.” The trial court repeated the terms of the plea agreement, and asked defendant if it was correct. Defendant indicated, “Yes, Your Honor.” Defendant asked the trial court whether the order of protection prevented him from going to his two residences located at 238 West 45th Place and 7536 South Normal, and after defense counsel confirmed that these addresses were not listed on the order of protection, the trial court explained, “So nothing in the order prevents you from going to those two addresses. Do you understand that?” Defendant indicated, “Yes, Your Honor.” Thereafter, the trial court engaged in an exchange with defendant about his guilty plea:

“THE COURT: Do you want to plead guilty and receive that sentence?”

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand that when you plead guilty you waive -- that means you give up your right to plead not guilty, and you give up your right to have a trial, either in front of a jury or in front of a judge?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you know what a jury trial is?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Is this your signature on this jury waiver?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Did you understand that when you sign that document, you're formally in writing giving up your right to a jury trial?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you also understand that when you plead guilty, you give up your right to a bench trial? That would be where I as the Judge would listen to the evidence, and I will decide whether you were guilty or not guilty.

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand you're giving up your right at a trial to see and hear witnesses testify against you? You're giving up your right to ask those witnesses questions, in other words, cross-examine them?

You are giving up your right to call or put on your own witnesses, and you're giving up your right simply to remain silent, say nothing, and make the State prove you guilty beyond a reasonable doubt. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand I could sentence you anywhere from 1 to 364 days in jail? I could fine you up to \$2,500, or I could sentence you to any combination of that jail and fine?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Understanding all of these things, sir, how do you wish to plea? Guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: Has anybody promised you anything or threatened you at all to get you to plead guilty?

THE DEFENDANT: No, Your Honor.

THE COURT: Are you pleading guilty of your own free will?

THE DEFENDANT. Yes, Your Honor.”

The trial court found that a factual basis for the plea existed and noted that defendant “caused injury to Joann Harris, a girlfriend, by knocking her to the ground, pulling her hair and dragging her.” The trial court accepted defendant’s plea, indicated that it was made freely and voluntarily, and found defendant guilty of one count of domestic battery.

¶ 5 Pursuant to the plea agreement, the trial court sentenced defendant to 18 months of conditional discharge, and ordered him to complete an alcohol and drug evaluation, comply with all treatment recommendations, complete domestic violence classes, pay fines and costs, and comply with an 18-month order of protection. The trial court asked defendant if he understood the terms of the plea agreement and the terms of the order of protection, and defendant responded “Yes, Your Honor” to both questions. Then, the trial court admonished him regarding

his appeal rights. At the conclusion of the plea hearing, the trial court asked defendant, “Any questions whatsoever about what’s happened here today?” Defendant responded, “No, Your Honor.” The trial court also asked defendant if he understand his responsibilities during his conditional discharge, and defendant responded, “Yes, Your Honor.”

¶ 6 On May 27, 2014, defendant filed a *pro se* motion, indicating “Appeal Decision” as the reason for the motion. At the May 29, 2014, hearing on the motion, defendant informed the trial court that he did not have a lawyer and that he wanted to withdraw his guilty plea, and argued, among other things, that he did not “have anyone that I could call to collaborate my defense because I bought too much, and I put my family in charge of too much stuff, my mother and Joann Harris through another person tried to take my property from me[.]”The trial court appointed another assistant Public Defender to represent defendant and continued the case.

¶ 7 On June 26, 2014, defendant filed a “Motion to Withdraw Plea of Guilty and Vacate Judgment,” alleging that on the day of the plea hearing, he “was under a tremendous amount of stress,” that “he was only able to interact with counsel in an overheated jail cell, which further added to his stress,” that his ability to understand criminal court proceedings was impeded by his incarceration and by the short time with his attorney, and that he believed that he will be found not guilty if he prevailed on his motion to withdraw his guilty plea.

¶ 8 At the June 27, 2014, hearing on defendant’s motion, the trial court indicated that it read the motion a “few times” and that it looked at the transcript of the guilty plea hearing. The trial court summarized defendant’s claims, and then stated, “I’ve read through the motion and - - or the transcript. And there’s just nothing in the transcript, which I think supports the claims in the motion.” The trial court explained its reasoning, which included the following: defendant was

lucid, oriented, and appropriately answered the trial court's questions regarding the rights he was giving up; defendant participated in an exchange with the trial court regarding the addresses protected by the order of protection; defendant paid attention, interacted with the trial court, and involved himself in the plea; there was nothing to suggest that defendant was "under any sort of heat related distress or any sort of stress from being in custody"; when the trial court asked him if he had any questions at the end of the plea hearing, defendant did not "mention, at that time, any sort of distress he might be experiencing from conditions in the lockup"; and he did not make any complaints about his lawyer or that he was not able to spend time with his lawyer.

¶ 9 The trial court denied defendant's motion, stating, "So these are claims in a motion. There's just no corroboration for them. And the transcript, itself, alines [*sic*] these claims. So, I just don't think that [defendant] has carried his burden in showing that the plea was involuntarily or against his will in any way." Thereafter, defendant asserted allegations suggesting that his counsel was ineffective, so the trial court continued the case for defendant to obtain a private lawyer and to file an "amended" motion.

¶ 10 Thereafter, on August 1, 2014, September 19, 2014, and October 17, 2014, defendant appeared in court *pro se*, and the trial court continued the case to allow defendant an opportunity to be represented by an attorney. On November 5, 2014, defendant's private attorney appeared on his behalf and the trial court granted him leave to file an appearance. The trial court continued the case to December 5, 2014 and requested that defendant file a written motion.

¶ 11 Thereafter, defendant filed a "Motion to Vacate Plea of Guilty," which included a document signed by defendant entitled, "Letter to overturn the appeal of the decision." In the attached document, defendant alleged that "Joann Harris lied to the police and due to my (PTSD)

Post Traumatic Stress Syndrome. My decision making process was not good.” He also alleged that his mother was trying to steal his house and that “Joann Harris new of this whole situation and figured that if my mother can get one house then she would get the other one[.]” At the December 5, 2014, hearing on the motion, the trial court informed defense counsel that it “read your motion” and “the attached affidavit signed by [defendant],” and then defendant testified. Defendant testified that he never engaged in domestic battery with Harris, that he pled guilty “Due to the fact that the PTSD that I’m diagnosed with, my decision making process was not good,” and that he had been going to therapy with the Veterans Administration and other organizations.

¶ 12 Thereafter, the trial court denied defendant’s “Motion to Vacate Plea of Guilty,” stating as follows:

“I’ve looked at this second motion. I’ve read the transcript again. I’ve read [defendant’s] affidavit, and just going through the transcript of the plea, there’s just nothing in here which would suggest [defendant], that you didn’t understand what was going on or that you - - that you were confused or under any sort of duress from PTSD or heat or anything else in here.”

The trial court further stated that defendant understood the questions that it asked him and the rights that he was giving up and that defendant did not have any questions when the trial court asked him at the end of the plea hearing if he had any questions about what had happened. The trial court concluded that defendant knew that he “could file a motion to withdraw within 30 days, but it wasn’t an automatic withdrawal,” and it found that his plea of guilty was not involuntary or the product of ineffective assistance of counsel.

¶ 13 Shortly after denying defendant's motion, the trial court permitted defendant to testify again. Defense counsel asked defendant what his thought process was on the day he pled guilty and how it was affected by PTSD. Defendant responded, "The decision making process is when you're trying to get some things in order. One, I got a daughter situation. She's in a different state. I'm trying to go back and forth to that state to take care of her before all of this - -"

Defense counsel and defendant then engaged in the following exchange:

“[DEFENSE COUNSEL]: Well I'm asking you, I'm not putting words in your mouth, but I'm asking you did you feel that you'd be putting things in order by pleading guilty as distinguished from saying not guilty and then going to court several more times before you had a trial, was that part of your thought process?”

THE DEFENDANT: It was part of my - - it - - that, that, that was my thought, my thought process at the time because I did not understand the - - the validity of what was going on. I did not understand.”

¶ 14 Defendant further testified that he was being treated for PTSD and that he experienced residual effects from his experiences in the army. After defendant testified, defense counsel argued as follows:

“He knew or I think it's reasonable to believe he knew, he pleads guilty, he's not going to jail. He's walking out, so that's one less problem he has, okay. But upon, you know, thinking about it for - - really getting a chance to think about it, I think his thought process was why should I have a criminal record when I never did anything to this woman.”

After hearing defendant's additional testimony and defense counsel's argument, the trial court indicated that it would keep its original ruling, which denied his motion. This appeal followed.

¶ 15 On appeal, defendant contends that, in the interest of justice, we should reverse the trial court's ruling denying his motion to withdraw his guilty plea and remand this case for trial. He argues that he presented evidence during the hearing on his motion that casts doubt on his guilt, including that Harris made a false claim against him, that his mother and Harris worked together "to take two houses away from him," and that he did not commit the offense of domestic battery against Harris. Defendant asserts that he pled guilty because "his decision-making process was not good due to PTSD [Post Traumatic Stress Disorder]" and that he gave up his right to a trial due to his PTSD and "his eagerness to get out of custody to fight for his house." Defendant argues that the ends of justice would be better served if his case went to trial.

¶ 16 There is no automatic right for a defendant to withdraw a guilty plea. *People v. Baez*, 241 Ill. 2d 44, 110 (2011). The trial court's ruling on a defendant's motion to withdraw a guilty plea "will not be disturbed unless the plea was entered through a misapprehension of the facts or of the law, or if there is doubt as to the guilt of the accused and justice would be better served by conducting a trial." *People v. Delvillar*, 235 Ill. 2d 507, 520 (2009). Further, to withdraw a guilty plea, a defendant "must show a 'manifest injustice' under the facts involved." *Baez*, 241 Ill. 2d at 110.

¶ 17 It is a defendant's burden to prove to the trial court the necessity to withdraw his or her plea (*People v. Dougherty*, 394 Ill. App. 3d 134, 140 (2009)), and it is within the trial court's discretion whether to allow a defendant to withdraw a guilty plea (*People v. Spriggle*, 358 Ill. App. 3d 447, 450 (2005)). We will only reverse a trial court's ruling if we find that its decision

was an abuse of discretion. *People v. Feldman*, 409 Ill. App. 3d 1124, 1127 (2011). “An abuse of discretion will be found only where the court’s ruling is arbitrary, fanciful, unreasonable, or no reasonable person would take the view adopted by the trial court.” *Delvillar*, 235 Ill. 2d at 519. “It is the trial court’s burden to assess the credibility of the witnesses who testify at a hearing on a motion to withdraw a guilty plea. *People v. Mercado*, 356 Ill. App. 3d 487, 497 (2005).

¶ 18 As an initial matter, we note that defendant does not contend that, before he accepted his guilty plea, the trial court did not properly admonish him under Supreme Court Rule 402(a) (eff. July 1, 2012). Defendant is also not contending that he entered the guilty plea through a misrepresentation of the facts or law. Rather, he asserts that there is doubt as to his guilt and that the trial court should have allowed him to withdraw his guilty plea to prevent a manifest injustice. We disagree and conclude that the trial court did not abuse its discretion when it denied defendant’s motion to withdraw his guilty plea.

¶ 19 The trial court gave defendant several opportunities to present his claims in support of his motion to withdraw his guilty plea. It conducted two hearings and, at each hearing, it reviewed both the postplea motion as well as the guilty plea transcript. At the first hearing, the trial court indicated that it read the motion a “few times” and looked at the transcript of the guilty plea hearing. The trial court concluded that the transcript did not support the claims in defendant’s motion and that he did not meet his burden of showing that he entered into the plea involuntarily. After denying the motion, it continued the case and allowed defendant to file an “amended” motion. At the hearing on the “amended” motion, the trial court indicated that it reviewed the second motion, the attached document signed by defendant, and the transcript of the guilty plea hearing, and it allowed defendant to testify two times. In addition, from June 27, 2014, the day of

the first hearing, to December 5, 2014, the day of the hearing on defendant's second motion, the trial court continued the case three times to give him the opportunity to be represented in court by a private attorney.

¶ 20 Despite these opportunities to present evidence in support of his claims, defendant did not present any objective evidence to support his claims. See *Feldman*, 409 Ill. App. 3d at 1128-29; *Dougherty*, 394 Ill. App. 3d at 135, 140 (where the defendant pled guilty to the offense of domestic battery and argued in his motion to withdraw his guilty plea that the victim's story was false, the reviewing court affirmed his guilty plea, noting, "Most, if not all, of the evidence listed in his motion was available to defendant at the time of his plea" and "No one other than defendant and the victim were present when the crime was committed. Defendant failed to present any other witnesses or affidavits to show that there was favorable testimony supporting a reasonable doubt as to his guilt."). Rather, to support his claims, defendant presented self-serving allegations contained in his "Letter to overturn the appeal of the decision." Further, at the second hearing on his "amended" motion, defendant had the opportunity to testify two times. The trial court, which is tasked with assessing the credibility of witnesses, found that defendant's self-serving statement about his innocence was insufficient, stating, "When I hear [defendant] say I didn't do it after he's plead [*sic*] guilty to the - - to the offense, that's a self-serving statement, which is his words only, and that's not enough for me to allow the withdrawal of the plea of guilty." Under these facts and circumstances, defendant has not met his burden of demonstrating doubt as to his guilt or that a "manifest injustice" exists, and we cannot find that the trial court's ruling was arbitrary, fanciful, or unreasonable.

¶ 21 Defendant cites *People v. Pullen*, 192 Ill. 2d 36 (2000), to support his argument that the trial court should have granted his motion to withdraw his guilty plea because “the ends of justice would be better served by submitting the case to a trial.” In *Pullen*, the supreme court affirmed the appellate court’s order that reversed the trial court’s ruling denying the defendant’s motion to withdraw his guilty plea because the defendant’s sentence exceeded the statutory maximum. *Pullen*, 192 Ill. 2d at 46. The supreme court noted, “entering into a negotiated plea to serve a greater amount of time than that to which one could legally be sentenced would constitute a serious misapprehension of the law.” *Id.* at 40. Here, unlike *Pullen*, defendant is not challenging that his sentence exceeded the statutory maximum or that there was a misapprehension of the law. Therefore, we do not find *Pullen* persuasive for our ruling.

¶ 22 Defendant also cites *People v. McKirdie*, 45 Ill. 2d 300 (1970), to support his argument that “if the defendant has any defense to the charge, the trial court should permit him to change his plea to not guilty.” In *McKirdie*, the defendants pled guilty and were sentenced to terms in the Illinois State Farm. *McKirdie*, 45 Ill. 2d at 301. The defendants filed a motion to withdraw their pleas of guilty with an affidavit alleging that, at the pretrial hearing, defense counsel understood that the defendants would be sentenced to probation if they pled guilty and that defense counsel informed the defendants of this promise. *Id.* at 302. The trial court denied the defendants’ motion without a hearing, and the supreme court remanded, noting, “in the absence of a report of proceedings preserving what transpired at the pretrial conference, a proper exercise of discretion required the trial court to conduct a hearing on the motion of defendants, rather than to summarily deny it.” *Id.* at 303. Here, in contrast, defendant is not asserting that he pled guilty in reliance on certain terms that were not made part of the plea agreement. Moreover, unlike

McKirdie, where the trial court summarily denied the defendants' postplea motion without a hearing, here, the trial court reviewed defendant's postplea motions and the transcript of the guilty plea hearing, it conducted two hearings, and, at the second hearing, defendant testified two times. Therefore, *McKirdie* is distinguishable and not persuasive for our ruling.

¶ 23 For the reasons explained above, we find that the trial court did not abuse its discretion when it denied defendant's motion to withdraw his guilty plea.

¶ 24 Affirmed.