Fourth Division
March 9, 2017

No. 1-15-0727

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. 11 CR 5016
	)
ERICK FIELDS,	) Honorable
	) Maura Slattery-Boyle,
Defendant-Appellant.	) Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices McBride and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant waived his contention that the trial court erred by denying his pretrial motion when he entered a voluntary guilty plea. Defendant's convictions for possession of a controlled substance affirmed where he failed to allege ineffective assistance of counsel and knowingly and voluntarily pled guilty.

¶ 2 Defendant Erick Fields pled guilty to two counts of possession of a controlled substance (720 ILCS 570/402(c) (West 2010)) and was sentenced to 18 months of probation. On appeal,

defendant contends that the trial court erred by 1) denying his pretrial motion to quash his arrest and suppress evidence, and 2) denying his motion to withdraw his guilty plea. For the following reasons, we affirm.

¶ 3 Defendant was arrested for aggravated assault on a police officer and charged with two counts of possession of a controlled substance. In a pretrial motion, defendant asserted that police lacked probable cause to arrest him, and therefore, the search where police recovered narcotics from his clothing was illegal. Defendant's motion requested that the trial court quash his arrest and suppress evidence of the recovered narcotics.

¶ 4 During the motion hearing, attorneys Tom Needham and Robert Lucenti represented defendant. Officer Petain Navez testified that on February 24, 2011, he and his partner responded to a dispatch call regarding a shooting. When Navez arrived at the area of the alleged shooting, he was in uniform and in a marked police vehicle. Near 2210 N Keystone, Navez observed a car running with its passenger door ajar and radio playing. He also observed a light emanating from a side door to the garage at 2210 N Keystone. Navez cleared the area near the side door because he was unsure if someone was hurt and needed medical aid or whether the shooter left the running car.

¶ 5 Navez did not announce his presence while he was clearing the area for his safety. He approached the side door with his weapon drawn and heard "metallic" clinking noises coming from the garage that sounded like the "racking" of a gun. A man, later identified as defendant, was inside the garage, turned away from Navez, and crouched down next to a car about 10 feet away. Navez announced his office and said, "Show me your hands." When defendant stood up, he leaped and charged toward Navez. As he charged, defendant made a "forward motion with his left hand" and was holding a metallic cylindrical object that Navez believed was a gun.

Everything happened quickly and Navez feared for his life, so he fired one shot into defendant's abdomen. Defendant fell to the ground and dropped the object in his hand.

¶ 6 Other police officers responded to the scene and investigated the shooting. Detectives and the Independent Police Review Authority interviewed Navez. Navez did not recall whether he told the interviewers that he heard a gun, but he did tell them that he heard metallic sounds.

¶ 7 On cross-examination, Navez acknowledged he later found out that defendant had held an L-shaped cylindrical ratchet, not a gun. However, he testified that he was also worried about what defendant held in his other hand.

¶ 8 Officer Nicholas Orlando testified that on the evening of February 24, 2011 he was assigned as a prisoner guard to defendant, who was being treated for a gunshot wound. Defendant had been arrested for aggravated assault to a police officer. At the hospital, a nurse handed Orlando defendant's clothes and mentioned that they had blood on them. Orlando searched defendant's clothes and inventoried some of the items he discovered during the search. He did not have a search warrant authorizing him to search defendant's clothes and did not obtain defendant's consent to search his clothes.

¶ 9 On cross-examination, Orlando stated that he searched the clothes for his own safety and to recover evidence. He saw stains that may have been blood. During his search, he found narcotics in defendant's jacket. The clothing was defendant's personal property and upon arrest, police can inventory an arrestee's personal property. Orlando further testified that police inventory property for evidentiary value and to protect an arrestee's valuables.

¶ 10 Following arguments, the court stated,

> "The Court finds that based on the totality of the circumstances, given the allegations of this car on the pad a few feet away, the officers testified credibly.

> Yes, there was [*sic*] some things pointed out; however, the Court finds that there was no violation of Fourth Amendment rights. Motion to suppress is denied."

¶ 11 The court subsequently denied defendant's motion to reconsider. At a later date, defendant, represented by Lucenti, requested a Rule 402 conference. The court admonished defendant pursuant to Rule 402, and defendant responded that he understood the court's admonishments. After the conference, the court informed defendant that if he pled guilty, it would sentence him to 18 months of probation. Defendant again indicated that he understood. The court then admonished defendant regarding the charges against him and informed him that he was potentially subject to an extended-term sentence of three to six years, a $25,000 fine, and one year of mandatory supervised release. The court further admonished defendant of the rights that he was relinquishing. Defendant indicated that he understood the court's admonishments and wished to plead guilty. He stated that he was not forced or coerced to plead guilty, and was pleading freely and voluntarily.

¶ 12 After the court accepted the State's factual basis, defendant pled guilty. The court found that defendant understood the charges against him and that he waived his rights and sentenced him to 18 months' probation.

¶ 13 Through a different attorney, John Russell, defendant filed a timely motion to withdraw his plea, contending that he was under the influence of prescription medications during the plea hearing and did not knowingly waive his rights. Defendant's case was continued until several months later, when defendant, through attorney Lawrence Wolf Levin, filed a second motion to withdraw his guilty plea. The motion alleged that defendant and attorney Lucenti discharged attorney Needham, "based on 'what was termed certain questionable representation during the motion' under *Strickland v. Washington*, 466 U.S. 668 (1984)." The motion further alleged that

after the Rule 402 conference, Lucenti instructed defendant to "either take the probation, or if you do not, there is a substantial likelihood you will go to jail." Additionally, the motion asserted that Lucenti "literally broke down [defendant's] will in a 'coercive manner' " and told defendant "there was 'no other alternative than to do the 402 plea and take the plea because he was 'going to be found guilty and go to jail.' " The motion indicated that Lucenti "presented a 'dark picture' with the differing alternatives relative to the possible outcomes of the case." Finally, the motion contended that defendant maintains his innocence. The second motion did not mention defendant's argument regarding prescription medications.

¶ 14 At a hearing on defendant's second motion to withdraw his guilty plea, the court heard arguments and stated,

> "[The Court] went over this and went over the admonishment so thoroughly to indicate that there was no delusion. There was no duress. There was no indication. He spoke with his attorney. He understood his rights. And the Court finds that there was no duress or any situation. It was freely and voluntary. As [defendant] admitted on the record, he was not placed in any type of duress. And he was doing [*sic*] freely and voluntarily. There's no violation of *Strickland*. There's no indication of coercion or duress. Motion is denied to vacate plea."

This appeal follows.

¶ 15 On appeal defendant first contends the trial court erred by denying his motion to quash his arrest and suppress evidence based on ineffective assistance of counsel at the motion hearing. However, we decline to address this argument because we find that defendant waived this issue by pleading guilty. See *People v. Townsell*, 209 Ill. 2d 543, 545 (2004) (finding that a voluntary guilty plea waives all non-jurisdictional errors that occurred prior to the entry of a guilty plea,

including constitutional errors); see also *Tollett v. Henderson*, 411 U.S. 258, 267 (1973) (holding that where a defendant has admitted in open court that he is guilty of the charged offense, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea).

¶ 16 Defendant next asserts that the trial court erred by denying his motion to vacate his guilty plea. A defendant does not have an automatic right to withdraw his guilty plea. *People v. Delvillar,* 235 Ill. 2d 507, 520 (2009). Instead, to withdraw a guilty plea a defendant must demonstrate a manifest injustice under the facts involved. *People v. Baez*, 241 Ill. 2d 44, 110 (2011). The "ultimate question" is whether defendant entered the plea knowingly and voluntarily. *People v. Manning,* 371 Ill. App. 3d 457, 459 (2007). We review a trial court's decision to grant or deny a motion to withdraw guilty plea for an abuse of discretion. *Baez,* 241 Ill. 2d at 109-10. We will not disturb the decision of the trial court "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." (Internal quotations omitted) *Id.* at 110 (quoting *Delvillar,* 235 Ill. 2d at 520.

¶ 17 Defendant contends that his plea was involuntary based on ineffective assistance because 1) defense counsel Needham was unprepared at the motion hearing, which resulted in the trial court denying his motion; 2) Needham and Lucenti failed to investigate the chain of custody of the narcotics; and 3) Lucenti coerced him to plead guilty by telling him he would be incarcerated. The State responds that defendant's claims related to Needham's performance at the motion hearing and the failure to investigate the narcotics' chain of custody were uncorroborated and speculative, therefore, could not form the basis of an ineffective assistance claim. Further, the State contends that defense counsel did not coerce defendant into pleading

guilty, but merely informed him of the possibility of incarceration, and, in any event, defendant was properly admonished and entered the plea knowingly and voluntarily.

¶ 18 We apply the test set forth in *Strickland*, 466 U.S. 668, when a defendant challenges a guilty plea based on ineffective assistance of counsel. *Hill v. Lockhart*, 474 U.S. 52, 57 (1985); *People v. Hall*, 217 Ill. 2d 324, 334-35 (2005). To demonstrate ineffective assistance of counsel, defendant must show that (1) his counsel's performance was deficient, and (2) but for counsel's deficient performance, there is a reasonable probability that the outcome of the proceeding would have been different. *Strickland,* 466 U.S. at 687. The failure to satisfy either prong of the *Strickland* test precludes a finding of ineffective assistance of counsel. *People v. Patterson,* 192 Ill. 2d 93, 107 (2000).

¶ 19 In the context of a guilty plea challenge, an attorney's performance is deficient if the attorney "failed to ensure that the defendant's guilty plea was entered voluntarily and intelligently." *Hall*, 217 Ill. 2d 335 (2005). Prejudice is established if there is a reasonable probability that, absent counsel's errors, he would have pled not guilty and insisted on going to trial. *Id.* Without more, a mere allegation that the defendant would have pled not guilty and insisted on trial is insufficient to establish prejudice. *Id.* Instead, a defendant must additionally either claim innocence or set forth a plausible defense that could have been raised at trial. *Id.* at 335-36. Whether counsel's deficient representation caused the defendant to plead guilty largely depends on predicting whether the defendant likely would have been successful at trial. *Id.* at 336.

¶ 20 Defendant's first two ineffective assistance claims that Needham was unprepared at the motion hearing and Lucenti and Needham failed to investigate the narcotics' chain of custody were raised after he pled guilty. After pleading guilty, a defendant may not raise independent

claims relating to the deprivation of constitution rights that occurred prior to the entry of a guilty plea. See *Townsell*, 209 Ill. 2d at 545; *Tollett*, 411 U.S. at 267. He may only attack the voluntary and intelligent character of the guilty plea by demonstrating that the advice he received was not "within the range of competence demanded of attorneys in criminal cases." *Tollett*, 411 U.S. at 267. Here, defendant's claims of ineffective assistance pertained to counsels' conduct prior to the plea proceedings. Because the alleged errors occurred prior to the entry of his plea, he voluntarily relinquished the claims when he pled guilty, and accordingly, they are waived for review. See *id.*

¶ 21 Next, we are unpersuaded by defendant's final ineffective assistance contention. Defendant argues that Lucenti coerced him to plead guilty by informing him that "there [was] a substantial likelihood [he] will go to jail." He claims Lucenti "presented a dark picture" of the possible outcomes of his case. However, as the State pointed out, defendant had a prior attempted murder conviction and was potentially subject to a three to six year sentence. Thus, although the possible outcomes may have been "dark," we cannot fault counsel for merely informing defendant of the risks of proceeding to trial compared with the 18 months' probation defendant would receive as part of his plea. Given the possible sentence and the evidence against defendant, we see nothing to suggest that Lucenti's remarks were coercive or rendered defendant's guilty plea involuntary. See, *e.g., People v. Witherspoon*, 164 Ill. App. 3d 362, 365 (1987) (stating that "a defense attorney's honest assessment of a case cannot be the basis for holding that a defendant's guilty plea was involuntary").

¶ 22 Further, defendant indicated multiple times that he wished to plead guilty and the court thoroughly admonished defendant of the rights he was relinquishing. Critically, defendant stated that he was not being forced or coerced to plead guilty, and that his plea was free and voluntary.

Thus, defendant's contention that he was coerced into pleading guilty is unsupported by the record. See *People v. Ramirez,* 162 Ill. 2d. 235, 242-43 (1994) (the record demonstrated that the allegations made by defendant were refuted by his responses to the trial court's questions at the guilty plea hearing). Accordingly, we find that defendant failed to establish that his guilty plea was involuntary based on ineffective assistance of counsel. The trial court, therefore, did not err by denying defendant's motion to withdraw his plea.

¶ 23 Finally, defendant contends that his plea was involuntary because he was under the influence of prescription medication. The State counters, first, that defendant waived this contention by filing a second, superseding motion to withdraw without including this argument, and second, that there was no evidence that indicated defendant's alleged medication interfered with his ability to understand the plea proceedings. The record is unclear about whether defendant intended to waive the argument within his first motion. However, regardless of whether he waived the argument, we find that defendant failed to demonstrate that his medication interfered with his ability to understand the proceedings and plead guilty.

¶ 24 "Every defendant is presumed to be fit to stand trial, or to plead, and be sentenced." *People v. Jamison*, 197 Ill. 2d 135, 152 (2001). Merely taking psychotropic medication does not automatically render a defendant unfit. 725 ILCS 5/104-21(a) (West 2012). When a defendant claims he was unfit, he has the burden of proving that when he pled guilty, " 'there were facts in existence which raised a real, substantial and legitimate doubt as to his mental capacity to meaningfully participate in his defense and cooperate with counsel.' " *People v. Moore*, 408 Ill. App. 3d 706, 710 (2011) (quoting *People v. Eddmonds,* 143 Ill. 2d 501, 518 (1991)). "Such facts include the defendant's behavior and demeanor and any representations made by defense counsel regarding the defendant's competence." *People v. Bryant*, 2016 IL App (5th) 140334, ¶ 32.

¶ 25 Here, the record does not support defendant's assertion that he could not meaningfully understand his rights during the plea hearing. Defendant is presumed fit to plead and be sentenced (*Jamison*, 197 Ill. 2d at 152), and nothing in the record indicates that defendant was impaired or in any way unable to comprehend the proceedings (see *Bryant*, 2016 IL App (5th) 140334, ¶ 32). Moreover, the court extensively admonished defendant concerning his rights and defendant repeatedly responded that he understood and was freely pleading guilty. Without more than defendant's bare allegation of unfitness, we find his contention lacks merit.

¶ 26 For the preceding reasons, we conclude the circuit court did not abuse its discretion, and we affirm the order of the circuit court of Cook County denying defendant's motion to withdraw his plea.

¶ 27 Affirmed.