

2017 IL App (1st) 151881-U  
No. 1-15-1881  
Order filed December 29, 2017

Fourth 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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 20318
	)	
MANUEL A. PEREZ,	)	Honorable
	)	Lauren Gottainer Edidin,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE GORDON delivered the judgment of the court.  
Presiding Justice Burke and Justice Ellis concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant's argument on appeal is forfeited under Illinois Supreme Court Rule 604(d). Even if his argument was not forfeited, 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 Manuel A. Perez pled guilty to delivery of a controlled substance (cocaine) (720 ILCS 570/401(a)(2)(A) (West 2010)) and was sentenced to six years in prison. Thereafter, the trial court denied defendant's motion to withdraw his guilty plea and vacate judgment. On appeal, defendant contends that the trial court

erred in denying his motion because he mistakenly believed he was in the United States legally when he entered his guilty plea and was therefore unaware of the immigration consequences of his plea. We affirm.

¶ 3 In 2011, defendant and codefendant, Gerson Rodriguez-Avila, who is not a party to this appeal, were charged with one count of delivery of a controlled substance (cocaine) in case No. 11 CR 20318 and one count of delivery of a controlled substance (cocaine) in case No. 11 CR 20317. On September 10, 2014, the assistant State's Attorney informed the court that, in exchange for a plea of guilty in case No. 11 CR 20318, the State would offer defendant six years in prison and would nol-pros case No. 11 CR 20317. Defendant informed the court that he wanted to plead guilty.

¶ 4 The court informed defendant of the rights he was giving up by pleading guilty and explained to him that he was charged with a Class X felony that carried a sentencing range of 6 to 30 years in prison and three years mandatory supervised release (MSR). Defendant acknowledged he understood. The court informed defendant of the immigration consequences of his plea if he was not a citizen and defendant stated "I understand that." Defendant acknowledged that no one threatened or coerced him to plead guilty and was pleading guilty freely and voluntarily.

¶ 5 The State presented a factual basis for the plea. Des Plaines police officer Ben Ruzicka would testify that, on October 13, 2011, he was working as an undercover officer when defendant gave him an "object" in exchange for United States currency. A forensic scientist would testify that the object tested positive for cocaine in the amount of 18.4 grams. Defendant stipulated that the foregoing would be the testimony.

¶ 6 The court found a factual basis for the plea and that the plea was made freely and voluntarily. It accepted the plea and found defendant guilty in case No. 11 CR 20318. Pursuant to the plea agreement, the court sentenced defendant to six years in prison and three years MSR.

¶ 7 On September 23, 2014, on a preprinted motion form, defendant filed a *pro se* motion to vacate his plea. Attached to this motion was a handwritten letter from defendant addressed to his trial counsel requesting his counsel to file a motion to withdraw his plea or a “motion to an appeal.” In the letter, defendant wrote: “I’m at McHenry County Jail debating about my citizenship [*sic*] status in this country ‘My U.S.A[.]’ as soon as I dressed out at [S]tateville, I.C.[E]. took a [h]old of me but ‘good’ because now I can sort things out and become a citizen of the ‘My U.S.A.’ ” He also wrote that he pled guilty “[d]ue to the torture I was going or went through at the Cook County Jail for 3 years.” On October 3, 2014, defendant filed another *pro se* motion to withdraw his guilty plea and vacate judgment, alleging, *inter alia*, that three of his trial counsels provided ineffective assistance of counsel. The motion did not contain allegations regarding his immigration status.

¶ 8 On October 9, 2014, the assistant State’s Attorney informed the court that defendant was in the custody of Immigration Customs Enforcement (ICE). On January 28, 2015, the court held a *Krankel* hearing based on defendant’s ineffective assistance of counsel allegations contained in his *pro se* motion to withdraw his guilty plea.

¶ 9 Defendant testified at the hearing. He testified that his trial counsels “[n]ever pressed the issue for a trial” and did not “file motions to dismiss charges.” He testified that, when he was in jail, he was tortured, “there [were] illegal techniques being used against [him] to wear [him] off,” and he fractured his ankle and never received medical attention. He testified that he was living in

pain and the “[f]ood they [gave him] in jail, that forced [him] to plead guilty.” He testified about his immigration status as follows:

“I came here when I was a kid. I didn’t know. I owned my businesses, real estate. I went to school. I was attending college at Lake County, taking political science classes to become an attorney some day.

I never knew I was illegal. I have my kids here, my whole family practically. Now that I know I am being forced to leave my children behind, my family. Not only that, I was coming back for an appeal. If that wouldn’t had happened, ICE would have got a hold of me. I was coming back on appeal because I was coming to prove my innocence.”

¶ 10 Defendant testified that his guilty plea counsel never asked him if he was an illegal resident but, if he had, he would have “told him [he was] not” because he “didn’t know [he] was illegal.” He testified that there were various motions his counsels did not file and “they could have been looked into to support [his] innocence.” The court found that defendant’s claims regarding ineffective assistance of counsel lacked merit.

¶ 11 Thereafter, defendant was appointed an assistant public defender who filed an amended motion to vacate his plea, alleging, as grounds for vacating his plea, that he was “under psychological duress, due to the stress and his reaction there too, of being” in the Cook County jail for three years.

¶ 12 At the hearing on the motion, defendant testified he was born in Honduras on July 1, 1970, he fractured his left ankle when he was in custody, and he never received medical treatment. He testified about conditions in the Cook County jail, including issues related to

fighting, noise, and food. He testified about issues he experienced with clothing and shaving, which “made [him] fall into more depression,” and that “things like that force[d] me into pleading guilty, not my status of immigration.” Defendant testified that, before he pled guilty, he “never knew [he] was an illegal alien” and he “thought maybe [he] go do a day in Stateville and come back out and maybe take a week off with my children and then appeal the case. \*\*\* I ask your Honor to please look into it because of everything that I went through and I’m still going through, still strong to take these to trial, not because of my immigration issues.”

¶ 13 On cross-examination, defendant testified that, when he had pled guilty, he had been in the Cook County jail for three years, was currently in custody of ICE, and was expecting to be deported. On redirect, he testified that he wanted to vacate his plea because he wanted “[t]o take [his] case to trial to prove [his] innocence.” He testified that he pled guilty because he “couldn’t take the pain and the suffering any longer.”

¶ 14 In closing argument, defense counsel argued defendant was subject to “deplorable conditions,” which “all weighed heavily on his psychological components.” Defense counsel argued that defendant pled guilty because he was “under duress” and unable to “function in the way that he would have if he had a clear mind on these situations.” In rebuttal argument, defense counsel argued that he “believe[d] you heard through [defendant’s] own mouth, it is not due to his immigration issue. This is purely the consequences of him being in custody and weighing on his being \*\*\*.”

¶ 15 The trial court denied defendant’s motion, finding that it “simply [did not] find the defendant’s statements that the reason he pled guilty was because he was under duress.” It did not find any basis in fact or law to vacate defendant’s plea.

¶ 16 On appeal, defendant contends that the trial court erred when it denied his motion to withdraw his guilty plea. He asserts that, at the time he entered his plea, he mistakenly believed that he was in the United States legally and therefore misapprehended the relevant facts and applicable law when he entered the plea. He argues that, because he was mistaken about his immigration status, he did not understand the severity of the immigration consequences that would attach to his guilty plea, including that it could result in deportation. Defendant requests that we vacate his conviction, allow him to withdraw his guilty plea, and remand the case for further proceedings.

¶ 17 The State argues that, under the doctrine of invited error, defendant's argument on appeal is forfeited. See *People v. Schickel*, 347 Ill. App. 3d 889, 896-97 (2004) ("Under the doctrine of invited error, an accused may not request to proceed in one manner and then later contend on appeal that the course of action was in error. [Citations.]" It asserts that defendant consistently argued in the trial court that his plea was involuntary because he was under duress at the Cook County jail, not because he did not know about his immigration status.

¶ 18 There is no automatic right for a defendant to withdraw a guilty plea. *People v. Baez*, 241 Ill. 2d 44, 110 (2011). Instead, "a defendant must show a manifest injustice in his or her circumstances." *People v. Glover*, 2017 IL App (4th) 160586, ¶ 31. We will not disturb a trial court's ruling on a motion to withdraw a guilty plea "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). When the defendant argues "a misapprehension of the facts or of the law, the misapprehension must be shown by the defendant." *Delvillar*, 235 Ill. 2d at 520. We review a

trial court's ruling on a motion to withdraw guilty plea for an abuse of discretion. *People v. Feldman*, 409 Ill. App. 3d 1124, 1127 (2011). We find an abuse of discretion only when the "ruling is arbitrary, fanciful, unreasonable, or no reasonable person would take the view adopted by the trial court." *Delvillar*, 235 Ill. 2d at 519.

¶ 19 We conclude that defendant has forfeited his argument on appeal. Illinois Supreme Court Rule 604(d) provides that "[u]pon appeal any issue not raised by the defendant in the motion to reconsider the sentence or withdraw the plea of guilty and vacate the judgment shall be deemed waived." Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013).

¶ 20 In defendant's *pro se* motions to withdraw his plea and in his amended motion to withdraw his plea filed through counsel, defendant did not argue that he wanted to withdraw his plea because he entered it under the mistake of fact that he was in the United States legally. Rather, in the letter addressed to his guilty plea counsel, which was attached to his first *pro se* motion, he wrote that, he "only pleaded guilty [d]ue to the torture I was going or went through at the Cook County Jail for 3 years." In his second *pro se* motion, he alleged that three of his trial counsels provided ineffective assistance of counsel and he "pleaded [*sic*] guilty because of the ineffective assistance of all three counsels and the violation of due process by the State's Attorney." In his amended motion filed through counsel, he alleged that his "grounds for vacating his plea" were that "he was under psychological duress" from being in the Cook County jail for three years. The motion did not contain any allegations that he pled guilty under the mistake of fact about his immigration status or that his plea was involuntary because he was unaware of his status.

¶ 21 At the hearing on his motion to withdraw his plea, although defendant testified that “he never knew [he] was an illegal alien,” he never testified, and defense counsel did not argue, that he pled guilty because of the mistake as to his immigration status. Rather, he testified he pled guilty because of the conditions in the jail, he could not “take the pain and suffering any longer,” and he wanted to go to trial to “prove his innocence.” Defendant expressly told the court it was the jail conditions that “force[d] [him] into pleading guilty, not [his] status of immigration.” In closing argument, defense counsel argued that defendant pled guilty because he was “under duress.”

¶ 22 Accordingly, defendant proceeded in the trial court under the argument that his plea was involuntary because he was under duress due to the conditions in the jail that he had endured for three years before he pled guilty. However, on appeal, he now argues that the trial court erred when it denied his motion to withdraw his plea because he entered the plea under a mistake of fact about his immigration status and thus the consequences of his plea. Because defendant did not raise this argument in the trial court, it is forfeited under Rule 604(d). See *People v. Smith*, 406 Ill. App. 3d 879, 884-86 (2010) (where the defendant argued at the hearing on his motion to withdraw his guilty plea that he wanted to withdraw his plea because the court failed to admonish him about the MSR term and then argued on appeal that his plea agreement was improperly negotiated, the court found that, under Rule 604(d), the defendant forfeited the issue on appeal, noting that the trial court never had an “opportunity to exercise its discretion”).

¶ 23 Nevertheless, even assuming defendant’s argument is not forfeited, we would conclude that the trial court did not abuse its discretion when it denied defendant’s motion to withdraw his guilty plea.



¶ 24 Before defendant entered his plea, he was fully aware of the immigration consequences of his plea. At the plea hearing, the trial court admonished defendant of the immigration consequences as follows: “Do you understand if you’re not a citizen of the United States, a conviction for an offense such as this may have the consequences of deportation, exclusion from admission to the United States or denial of naturalization under the laws?” Defendant acknowledged he understood. Thus, the record shows that, when defendant entered the plea, he understood the applicable law and he voluntarily entered it with knowledge of the immigration consequences and applicable law.

¶ 25 Defendant asserts that, when he entered the plea, he misapprehended the relevant facts and applicable law because he mistakenly believed he was in the United States legally. However, “ ‘[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. Spriggle*, 358 Ill. App. 3d 447, 451 (2005) (quoting *People v. Artale*, 244 Ill. App. 3d 469, 475 (1993)). It is a defendant’s burden to establish “that the circumstances existing at the time of the plea, judged by objective standards, justified the mistaken impressions.” *People v. Smithey*, 120 Ill. App. 3d 26, 33 (1983). Defendant has not met his burden.

¶ 26 The record does not support that defendant’s subjective belief was justified. At the *Krankel* hearing, defendant testified he owned his own businesses and real estate, was attending college, and “taking political science classes to become an attorney.” At the hearing on his motion to withdraw guilty plea, defendant testified he was born in Honduras on July 1, 1970. Given defendant’s testimony about his background, education, and business experience, we

cannot find that his subjective mistake of his immigration status at the time of his plea deal, without substantial objective proof showing that it was reasonably justified, is sufficient to vacate his plea. Further, the record does not show, and defendant does not argue otherwise, that the court or the State induced defendant's misapprehension of the facts of his case, the law, or his immigration status. See *Smithey*, 120 Ill. App. 3d at 33 (“[T]he fact that the defendant entered a guilty plea under a misapprehension that was not induced by the State or the judge’s conduct is an insufficient ground for the withdrawal of a guilty plea.”).

¶ 27 Accordingly, even if defendant’s argument was not forfeited, under these facts, the record shows he entered the plea knowingly and voluntarily and he has not met his burden of demonstrating that a “manifest injustice” exists such that we should vacate his plea. We therefore conclude that the trial court’s ruling was not arbitrary, fanciful, or unreasonable and, thus, it did not abuse its discretion when it denied defendant’s motion to withdraw his guilty plea.

¶ 28 For the reasons explained above, we affirm the judgment of the circuit court.

¶ 29 Affirmed.