

2017 IL App (2d) 150201-U  
No. 2-15-0201  
Order filed July 24, 2017

**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  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Lake County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 13-CF-2908
	)	
SUDORSHAN V. FRANCE,	)	Honorable
	)	George Bridges,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE ZENOFF delivered the judgment of the court.  
Presiding Justice Hudson and Justice Schostok concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court abused its discretion in denying defendant's motion to withdraw his guilty plea where the plea was not voluntarily entered; the case was remanded for further proceedings.
- ¶ 2 Defendant, Sudorshan V. France, appeals an order entered by the circuit court of Lake County denying his motion to withdraw his guilty plea to the charge of aggravated battery. Defendant claims that his plea was actually a plea of *nolo contendere*, which he argues is invalid in the State of Illinois. Alternatively, defendant claims that his plea was not made voluntarily.

Defendant also claims that he is entitled to credit against his fines for time served. We hold that defendant's plea was involuntary, and thus reverse and remand for further proceedings.

¶ 3

### I. BACKGROUND

¶ 4 On November 16, 2013, a Lake County grand jury indicted defendant on five counts of aggravated battery (720 ILCS 5/12-3.05) (West 2012) and two counts of resisting a peace officer (720 ILCS 5/31-1) (West 2012). The charges arose out of an incident on October 9, 2013, where police officers responded to a domestic disturbance and saw defendant leaving the address of the disturbance. When the officers told him to stop, defendant swatted away an officer's hand and attempted to leave, at which point the officers restrained him. Defendant attempted to escape by biting, kicking, and shoving the police officers. He was taken into custody following this incident.

¶ 5 Defendant was a former Navy Petty Officer with a history of mental illness. Defense counsel petitioned to transfer defendant's case to both Veteran's Court and Mental Health Court. Defendant was denied entry into Veteran's Court because of his Other Than Honorable Discharge. Defendant was not fully evaluated for Mental Health Court because his counsel chose to proceed with trial. Defense counsel cited defendant's extensive time in custody (200 days) as the reason for proceeding to trial rather than waiting to see if defendant qualified for Mental Health Court.

¶ 6 On May 19, 2014, defendant waived his right to a trial and entered into a fully negotiated plea agreement. Pursuant to the agreement, defendant purportedly entered an *Alford* plea<sup>1</sup> on count I (aggravated battery), and the State nol-prossed the remaining six counts. After the State

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<sup>1</sup> An *Alford* plea is a guilty plea where a defendant maintains his innocence. See *North Carolina v. Alford*, 400 U.S. 25, 37-38 (1970).

presented the details of the negotiation for the court's consideration, defense counsel represented that the plea was "an *Alford* plea, Judge, a plea of not guilty, and a stipulation to the facts pursuant to *Alford v. Virginia* [*sic*]." Defense counsel reiterated that defendant was pleading "not guilty with the *Alford* plea, a stipulation to the facts for a court to find him guilty in this matter, Judge." The court immediately agreed with defense counsel's explanation of an *Alford* plea as a not guilty plea. Following that exchange, defendant assured the court that this was his understanding of the plea he would be entering. The court gave defendant further admonishments, accepted the parties' agreement, and sentenced defendant to 100 days in jail with credit for the 200 days he had already been in custody. He was also sentenced to two years of felony probation and assessed \$2,021 in fines and fees.

¶ 7 On June 18, 2014, defendant filed a *pro se* motion to withdraw his guilty plea. The court appointed counsel, who filed an amended motion on January 16, 2015. In an affidavit included with the amended motion, defendant claimed that he did not understand the plea he had entered, because his trial counsel had represented to him that he would be pleading not guilty. Defendant also claimed that his attorney told him that his *Alford* plea would not result in a felony conviction. On February 15, 2015, the trial court denied defendant's amended motion. The court found that defendant had been adequately admonished and that the court properly advised him that an *Alford* plea is a guilty plea. Defendant timely appealed.

¶ 8 II. ANALYSIS

¶ 9 Defendant argues that his plea was actually a plea of *nolo contendere*, and that such pleas are invalid in Illinois. Alternatively, he submits that his plea was involuntary.

¶ 10 A plea of *nolo contendere* is not the same as an *Alford* plea. In a plea of *nolo contendere* a defendant does not admit guilt, but agrees not to dispute the charge at issue. *Black's Law*

*Dictionary*, 1073 (8th ed. 1999). By contrast, “in an *Alford* plea, a defendant pleads *guilty* yet continues to proclaim his innocence.” *People v. Church*, 334 Ill. App. 3d 607, 614 (2002). Although pleas of *nolo contendere* and *Alford* pleas have the same effect of admitting to all alleged material facts, they are different pleas and cannot be used interchangeably. *Ranke v. United States*, 873 F.2d 1033, 1037 (7th Cir. 1989); *Church*, 334 Ill. App. 3d at 614.

¶ 11 The parties dispute whether pleas of *nolo contendere* are valid in Illinois in criminal cases. We need not address that issue because the record does not support defendant’s claim that his plea was a plea of *nolo contendere*. While defendant argues that his trial counsel “explicitly stated that defendant was entering a plea of *nolo contendere*,” the phrase “*nolo contendere*” does not appear anywhere in the record. Instead, the parties and the court consistently reiterated that defendant was entering an *Alford* plea. We therefore determine that defendant’s plea was an *Alford* plea. See *United States v. Harlan*, 35 F.3d 176, 180 n.1 (5th Cir. 1995) (when the parties and the court understood defendant’s plea to be an *Alford* plea, the appellate court would treat it as such despite intermittent use of the term “*nolo contendere*”).

¶ 12 *Alford* pleas were recognized by the United States Supreme Court in *North Carolina v. Alford*. *Alford*, 400 U.S. at 37-38. The defendant was charged with first-degree murder, and wanted to plead guilty to a charge of second-degree murder to avoid the death penalty. *Alford*, 400 U.S. at 28. The defendant testified that he was innocent, but repeatedly stated his wish to plead guilty. *Alford*, 400 U.S. at 28. At the time, courts were divided as to whether a guilty plea could be accepted if the defendant refused to admit to the crime and maintained his innocence. *Alford*, 400 U.S. at 33. The Supreme Court held that “while most pleas of guilty consist of both a waiver of trial and an express admission of guilt, the latter element is not a constitutional requisite to the imposition of criminal penalty.” *Alford*, 400 U.S. at 37. Since *Alford*, courts in

Illinois have accepted guilty pleas where a defendant nevertheless maintains his or her innocence. These pleas are now known as *Alford* pleas. As with all guilty pleas, before accepting an *Alford* plea, the court must ascertain that there is a factual basis for the plea. *People v. Barker*, 83 Ill. 2d 319, 333 (1980).

¶ 13 Defendant alternatively posits that, if he indeed entered a guilty plea, it was not entered voluntarily, and that he should be allowed to withdraw it. The trial court's denial of a motion to withdraw a guilty plea will only be overturned if the court abused its discretion. *Church*, 334 Ill. App. 3d at 615. A trial court abuses its discretion when its ruling is "arbitrary, fanciful, unreasonable, or no reasonable person would take the view adopted by the trial court." *People v. Delvillar*, 235 Ill. 2d 507, 519 (2009). A defendant must demonstrate that the denial of his motion to withdraw constituted a "manifest injustice under the facts involved." *People v. Jamison*, 197 Ill. 2d 135, 163 (2001). A defendant should be allowed to withdraw his plea if it was entered through "misapprehension of facts or of the law," or if there was doubt regarding the defendant's guilt in the matter. *Delvillar*, 235 Ill. 2d at 520. If a defendant claims misapprehension of the facts or law, he has the responsibility to show this misapprehension. *Delvillar*, 235 Ill. 2d at 520. However, subjective confusion regarding the plea is not enough to meet this threshold. *People v. Hale*, 82 Ill. 2d 172, 176 (1980). A defendant must also demonstrate that the circumstances at the time of pleading objectively and reasonably justified his mistaken impressions of the plea. *Hale*, 82 Ill. 2d at 176.

¶ 14 Under Rule 402(b), "the court shall not accept a plea of guilty without first determining that the plea is voluntary." Ill. S. Ct. R. 402 (eff. July 1, 2012). Additionally, the court is required to explain to a defendant entering a guilty plea the consequences of that plea. 725 ILCS 5/113-4(c) (West 2012). However, a guilty plea that substantially complies with the

requirements of Rule 402 will only be set aside if the nonconformity negatively prejudiced the defendant. *Barker*, 83 Ill. 2d at 329. Specifically, the only information that the court is required to communicate to a defendant to ensure the voluntariness of a plea is the direct consequences of that plea. *Delvillar*, 235 Ill. 2d at 520. This court has held that a guilty plea is involuntary where the court fails to inform the defendant of the possible sentences. *People v. Davis*, 145 Ill. 2d 240, 249 (1991). Additionally, withdrawal of a guilty plea should be permitted in any case where justice so requires. *People v. Schraeberg*, 340 Ill. 620, 628 (1930); *Delvillar*, 235 Ill. 2d at 522.

¶ 15 Defendant claims that, when he entered his plea, he was unaware that an *Alford* plea was a guilty plea. He contends that this lack of understanding constituted a misapprehension of the law regarding his *Alford* plea. Defendant argues that the transcript from his plea hearing, along with his affidavit, demonstrates his reasonable misapprehension of the law.

¶ 16 At the plea proceeding, defense counsel represented to the court that defendant's plea was "a plea of not guilty, and a stipulation to the facts pursuant to *Alford v. Virginia* [*sic*]." This colloquy followed:

"The Court [to defendant]: And is that your understanding of the charge that you would be pleading guilty to?

[Defense Counsel]: Judge, again, this is an *Alford* plea.

The Court: I understand.

[Defense Counsel]: He's pleading not guilty with the *Alford* plea, a stipulation to the facts for a court to find him guilty in this matter, Judge.

The Court: I understand that. Mr. France, is this your understanding of the plea you would be entering in this case?

Defendant: Yes, sir.”

Here, defense counsel twice incorrectly identified an *Alford* plea as a plea of “not guilty.” Although the court initially noted that it was a guilty plea, when defense counsel objected, the judge expressly agreed with defense counsel’s representation that the plea was a not guilty plea. When the court solicited defendant’s understanding of the plea, defendant agreed that he understood his counsel’s description of the plea (*i.e.*, that it was a not guilty plea). Thus, in defining the plea both as “not guilty” and “guilty,” the court created confusion and ultimately appeared to defer to defense counsel’s incorrect explanation.

¶ 17 We are mindful that the court made another reference to defendant’s plea being a guilty plea when the court admonished defendant of his trial rights. However, this reference was made in passing and could not overcome the confusion already created regarding the meaning of an *Alford* plea. Furthermore, when defendant signed his waiver of trial, nowhere on that form did it state that defendant was pleading guilty. Throughout the remainder of the hearing the court referred to defendant’s plea as a “negotiation” and a “plea of convenience,” which obscured the fact that defendant was entering a guilty plea and minimized the true impact of that plea. The court later advised defendant that he could move to withdraw his guilty plea, but by that point the court had already entered judgment “pursuant to the negotiation.” Referring to defendant’s plea as a guilty plea after it had already been accepted did not affect or ensure defendant’s understanding at the time he actually entered the plea. The court never clarified for defendant the meaning of an *Alford* plea, and defendant never explicitly stated that he was pleading guilty. Nor did the court explicitly state that it was entering a judgment “of conviction” on defendant’s plea of guilty.

¶ 18 Defendant's affidavit further illustrates his misapprehension of the law. He averred as follows. Defendant believed that he had an affirmative defense of self-defense because officers broke his hand while arresting him. Defendant initially asked his trial counsel to present this defense to a jury. Immediately prior to entering the plea, defense counsel told defendant that he could accept a negotiated plea agreement and enter an *Alford* plea, assuring defendant that this plea would allow him to maintain his innocence and keep his record clean. Defense counsel also told defendant that he did not need to plead guilty. Although defendant believed that he would prevail at trial on a self-defense argument, he accepted this plea agreement because he was unwilling to risk a felony conviction.

¶ 19 Taken together, defendant's affidavit and the transcript of the plea hearing demonstrate that defendant was subjectively confused regarding his *Alford* plea. Defense counsel's explicit statements, which were not corrected by the court, led defendant to believe that an *Alford* plea was a plea of not guilty. Although the court had the opportunity to correct this mistaken understanding during the hearing, it did not do so. Instead, the court continued to refer to the plea as a "negotiation" and a "plea of convenience," thus failing to resolve the confusion that had been created regarding the meaning of an *Alford* plea. The record shows that defendant understood his *Alford* plea to be a plea of not guilty. Accordingly, we hold that defendant has met his obligation to demonstrate his subjective misunderstanding.

¶ 20 Defendant's misunderstanding resulted from defense counsel's incorrect advice and was fostered by the court's apparent agreement with defense counsel's incorrect description of an *Alford* plea at the plea hearing. If defendant did not understand that he was pleading guilty, he certainly could not fully understand the consequences of that plea, the most direct of which is a felony conviction. The court did not so admonish him. Defendant asserted in his affidavit that a



felony conviction is exactly what he was attempting to avoid. Moreover, the court fed defendant's misunderstanding by referring to the plea euphemistically as a "negotiation" and a "plea of convenience." Thus, the confusing admonishments so prejudiced defendant that his plea was not voluntarily made. Because defendant's mistaken understanding was caused by the statements of defense counsel and the court, we hold that defendant has shown that his confusion was objectively reasonable. Under these circumstances, the interests of justice require that defendant be allowed to withdraw his plea. Consequently, we hold that the trial court abused its discretion in finding that defendant had been adequately admonished regarding his *Alford* plea and its consequences, and in finding that defendant's plea was voluntarily entered. We reverse the denial of defendant's motion to withdraw his plea and remand the matter to allow defendant to withdraw his plea.

¶ 21 Defendant also asks that we award him credit against his fines. Because we are reversing the denial of defendant's motion to withdraw his guilty plea and remanding the matter to the trial court, we need not address this issue.

¶ 22

### III. CONCLUSION

¶ 23 For the reasons stated, we reverse the denial of defendant's motion to withdraw his guilty plea and remand this case to the trial court for further proceedings consistent with this decision.

¶ 24 Reversed and remanded.