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2017 IL App (4th) 150127-U

NO. 4-15-0127

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

February 24, 2017

Carla Bender

4th District Appellate Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Livingston County
JOHN D. HUDSON,)	No. 13CF263
Defendant-Appellant.)	
)	Honorable
)	Robert M. Travers,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Turner and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in denying defendant's motion to withdraw his negotiated guilty plea.

¶ 2 In December 2014, defendant, John D. Hudson, entered into a negotiated guilty plea to aggravated battery of a correctional officer in exchange for a four-year prison sentence. Thereafter, he filed a *pro se* motion to withdraw his plea. Following a February 2015 hearing, the trial court denied the motion. Defendant appeals from that denial. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In October 2013, a grand jury charged defendant by indictment with aggravated battery of a correctional officer, alleging he "grabbed Christopher Leipold about the arm and pulled, causing a laceration to said arm, knowing Christopher Leipold to be a correctional institution employee of the State of Illinois Department of Corrections, who was engaged in the

performance of his authorized duties" (720 ILCS 5/12-3.05(d)(4)(i) (West 2012)). At the time of this offense, defendant was in the custody of the Department of Corrections (DOC) serving time for aggravated robbery (www.idoc.state.il.us/subsections/seach/inms_print.asp?idoc (last visited January 25, 2017)).

¶ 5 On May 2, 2014, William Bertram was assigned to represent defendant.

¶ 6 On December 1, 2014, the day set for the jury trial, the parties informed the trial court a plea agreement had been reached. Prior to accepting defendant's plea, the court admonished defendant of the charge against him and the sentencing range of three to seven years in DOC. The court advised defendant his sentence would have to run consecutive to the DOC sentence he was currently serving. Defendant indicated he understood the charge and the sentencing consequences. He acknowledged his signature on the waiver of trial and plea of guilty. When asked, defendant indicated he needed additional time to consult with his attorney, which the court granted. Thereafter, the court advised defendant of his right to proceed to trial. The court also advised defendant, by pleading guilty, he was waiving the right to a trial of any kind, his presumption of innocence, his right to remain silent, his right to confront witnesses against him, his right to compulsory process, his right to testify, and his right to hold the State to its burden of proof beyond a reasonable doubt. Defendant stated his desire to plead guilty.

¶ 7 The factual basis given for the plea stated testimony from correctional officers Christopher Leipold and Ryan Krewer would reveal on or about September 25, 2012, defendant committed a battery in which he caused bodily injury to Leipold when he grabbed Leipold about the arm and pulled the arm, causing a laceration on Leipold's hand which required treatment and five sutures. This offense occurred at Pontiac Correctional Center, a part of DOC.

¶ 8 Defendant acknowledged the plea agreement included a recommendation of a

four-year sentence in DOC followed by two years of mandatory supervised release. Defendant indicated he had not been offered anything else, he had not been threatened, he had not consumed any medication or other material which would cause him to be confused, and he was pleading guilty of his own free will.

¶ 9 The trial court accepted the plea as knowing and voluntary. The court indicated there was a factual basis for the plea and concurred with and imposed the recommended four-year sentence. The court advised defendant of his appeal rights pursuant to Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013).

¶ 10 On December 30, 2014, defendant filed a *pro se* motion to withdraw his guilty plea. In that motion, defendant alleged (1) when he appeared in court on December 1, 2014, he did not know he was actually scheduled to go to trial; (2) his counsel never provided him with copies of discovery to weigh the evidence against him; (3) his counsel conducted an inadequate investigation to see if defendant had an "adequate" defense; (4) he did not intentionally or knowingly cause harm to Leipold; rather, he simply yanked his hand away to escape the physical pain and excessive force Leipold used on him; (5) Leipold had a history of using excessive force against inmates; and (6) he felt "ambushed" and pressured into pleading guilty by his counsel's lack of investigation and preparation for trial. Attached to the motion was a prison report finding defendant guilty of four offenses, including assault of a staff person. The basis for the decision reflected Leipold was removing restraints after placing defendant back in his cell. When the left cuff was removed, Leipold had to maintain control of defendant's right hand. Defendant pulled away, causing a cut to Leipold's right index finger. Defendant refused to stop fighting, other officers became involved, and defendant was sprayed with oleoresin capsicum (often referred to as pepper spray). Also attached to the motion was defendant's affidavit averring the same

allegations in the motion and the affidavit of Anthony Gay alleging Leipold had bent his wrist in a painful manner, causing Gay to yank his hand away to "alleviate the misuse of force."

¶ 11 On January 28, 2015, at defendant's request, Bertram was excused from representing defendant. Randell Morgan was appointed to represent defendant on his motion to withdraw his guilty plea.

¶ 12 On February 19, 2015, Morgan filed a certificate pursuant to Rule 604(d).

¶ 13 At the February 20, 2015, hearing on the motion to withdraw the guilty plea, Morgan indicated defendant's *pro se* motion to withdraw adequately set forth defendant's claims of innocence and his reasons for wanting to withdraw his plea.

¶ 14 Defendant testified he was not guilty of assaulting Leipold. He stated, even though he knew he could face a longer sentence if he went to trial, he wanted to withdraw his plea. The following colloquy took place between Morgan and defendant:

"Q. Why is it that you entered a guilty plea and admitted guilt, after the [c]ourt went through its admonitions or your rights with you, why is it that you pled guilty on that day?

A. I have no idea.

Q. Well, the [c]ourt asked you if you wanted to plead guilty, and you said you did. Do you remember that?

A. Yes.

Q. And why did you do that?

A. Because I didn't really understand everything that was going on at the time.

Q. Okay. What is it that you particularly did not

understand?

A. At the time, like basically, the time they was going to give me and stuff like that. I looked at my case, and I seen it was bogus.

Q. Well, let's break that down a little bit. Did you understand the amount of years you were receiving by agreeing to the guilty plea?

A. Yes.

Q. What was it about the—when you refer to something being, bogus, are you referring to the incident itself?

A. Yes.

Q. And you've set forth in your affidavit, in your motion, that you believe you were not guilty and the reasons for that. Right?

A. Right.

* * *

Q. Okay. When you came in for the hearing and the judge asked you various questions, did you understand what he was asking you?

A. No, not all of it.

Q. You did say you wanted to take the offer and you wanted to plead guilty though?

A. Yes.

Q. Explain, best you can, why you did that if today you're thinking that was a mistake or you didn't fully understand?

A. It was less time than you get from being found guilty. Since looking at the case from that matter, I shouldn't be sentenced to this time because the case is bogus, I didn't even do it anyway.

Q. Okay. When did you come to that realization as to what was happening and appreciate what you had done?

A. Took the time when I went back to my cell.

Q. *** Did you not understand, when you were having the hearing, the time that you were accepting or how much time you would have to do?

A. Right.

Q. Were there questions that Mr. Bertram asked you that you didn't understand or any information that he gave to you that you didn't understand?

A. No.

Q. Is there any other reason, other than you've put forth in writing and in your affidavit, that you want to tell the [c]ourt about today why you want to withdraw your guilty plea?

A. Yes.

Q. What else would you like to tell the [c]ourt about why you want to withdraw your guilty plea?

A. If I get back and see, if I get back on this case, get this

time back.

Q. Before you came into court on the day of the hearing that you pled guilty, did you discuss that situation with Mr. Bertram as to what you would be doing when you got into court?

A. Yeah.

Q. Did he tell you the offer of the State in terms of how many years it would be?

A. Yeah.

Q. Did you have questions about that at the time?

A. No.

Q. Were the years that you were sentenced to consistent with what Mr. Bertram told you before you came in?

A. Yeah.

Q. Anything else you want to tell the [c]ourt about confusion or misunderstanding or your thinking since the entry of the guilty plea as a reason why the [c]ourt should allow you to withdraw?

A. No.

Q. Have we covered all those things?

A. Yes.

Q. Plus what's in your written affidavit?

A. Yes."

¶ 15

On cross-examination, defendant testified he was serving time in DOC for a prior

aggravated robbery for which he was sentenced pursuant to a guilty plea. Defendant stated Bertram had disclosed a list of witnesses to the State and had subpoenaed those witnesses to testify in his defense. He also stated he knew Bertram had announced the case was ready for trial in hearings prior to the December 1, 2014, trial date. Defendant acknowledged at a previous hearing Bertram had communicated to him an offer from the State and defendant asked Bertram to negotiate a lower sentence. Defendant stated he had an opportunity to speak with Bertram each time they were in court. Although Bertram told defendant they would talk about the evidence from the prosecution, defendant never saw any evidence or anything indicating there was a videotape of the incident.

¶ 16 Bertram testified he was appointed to represent defendant in June or July 2014. He met with defendant three or four times and they discussed the case. During the second or third court date, the State made an offer which Bertram conveyed to defendant. Defendant had an affirmative defense of self-defense, which was relayed to the State during discovery, along with the names of potential defense witnesses. At the last pretrial hearing in September 2014, Bertram announced ready for trial knowing it was defendant's intent to have a jury trial. Bertram subpoenaed witnesses to testify for defendant and they were writted to appear on the day scheduled for trial. Between September 2014 and the December 2014 trial date, the State made another offer, which was conveyed to defendant on December 1, 2014. Bertram testified he was not allowed to give defendant discovery. However, he discussed the discovery with defendant both in person and on the phone.

¶ 17 On cross-examination, Bertram testified he did not recall specifically advising defendant of the exact trial date. However, at the previous pretrial, the trial court informed defendant his trial would take place during the week of December 1, 2014. When defendant

arrived for the December 1, 2014, trial, Bertram advised him of the new plea offer, which they discussed for 5 to 10 minutes. Bertram noticed no language or communication impediment between him and defendant and defendant appeared to understand what Bertram told him about the plea offer.

¶ 18 After hearing arguments of counsel, the trial court denied the motion, finding no grounds to justify a withdrawal of the plea. In so doing, the court found defendant was not rushed or rapidly forced to plead guilty. The court also noted defendant had been present for all hearings. He had been arraigned and no motions were ever set for a hearing. All court dates were settings for a jury trial. Therefore, defendant had been fully informed of the progress of his case each time he appeared and was aware his case was set for a jury trial on December 1, 2014. The court noted the December 1, 2014, plea offer was an improvement over the previous offer of five years in DOC.

¶ 19 The trial court noted two factors could allow it to grant the motion, (1) the accused had a defense worthy of consideration by a jury and (2) the ends of justice would be better served by submitting the case to a jury. Regarding the defense worthy of consideration factor, the court stated the following:

"I certainly cannot judge his defense; it is based solely on the affidavit of a convicted felon. He says, [']I'm not guilty.['] It was something that was expressed to counsel, it was something that was discussed with counsel, and it was something that was clearly and unquestionably waived. This is one of the few withdrawal cases that you're going to see where there isn't an allegation that somebody forgot to tell the defendant something or something was

left out, the minimum or maximums, the extended-term eligibility; no, he was correctly admonished. He gave answers himself; these were not answers that came strictly through counsel. He was asked if he had been threatened or promised. And ultimately he was asked if he was pleading guilty because he was truly guilty; and he indicated, yes, that he was."

Regarding the ends of justice being better served by submitting the case to a jury factor, the court stated, "it depends on what your view of the ends of justice is, the potential for a longer sentence or the potential for a not-guilty finding. I don't know. I suspect that would vary dependent upon which side you're here on today."

¶ 20 Ultimately, the trial court determined it should deny defendant's motion. The court reasoned, "Everything was done properly here; everything was set up in a timely fashion. This is the way things should be done, quite frankly." The court further stated:

"I understand that the defendant has had an opportunity to think about this and has decided possibly to take his chances; but if the admonitions are any good at all, okay, if any of this was done for any purpose, then this is a good and solid plea; and it stands up. It's not necessary to correct a manifest injustice, and it certainly is not necessary for any other of the reasons that I have recited."

Thereafter, the court denied defendant's motion to withdraw his guilty plea. This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 On appeal, defendant contends the trial court abused its discretion by denying his

motion to withdraw his guilty plea. Specifically, defendant argues he presented evidence casting doubt on his guilt, he has a meritorious defense of self-defense, and the ends of justice would be better served by submitting his case to trial.

¶ 23 "A defendant has no absolute right to withdraw his guilty plea. [Citation.] Rather, he must show a manifest injustice under the facts involved. [Citation.]" *People v. Hughes*, 2012 IL 112817, ¶ 32, 983 N.E.2d 439. When a defendant moves to withdraw his or her guilty plea, the trial court "shall evaluate whether the guilty plea was entered through a misapprehension of the facts or of the law, or if there is doubt of the guilt of the accused and the ends of justice would better be served by submitting the case to a trial." *People v. Pullen*, 192 Ill. 2d 36, 40, 733 N.E.2d 1235, 1237 (2000). We do not perform this evaluation. Instead, we decide whether the trial court's evaluation was an abuse of discretion. *Id.* The trial court abused its discretion only if its evaluation is arbitrary, clearly illogical, or outside the range of reasonableness. *People v. Fisher*, 407 Ill. App. 3d 585, 589, 944 N.E.2d 485, 490 (2011).

¶ 24 Here, we cannot say the decision of the trial court was arbitrary, clearly illogical, or outside the range of reasonableness. On the day scheduled for trial, defendant was advised by his attorney about the plea offer. During the hearing, the court asked defendant if he needed more time to talk with his attorney and was granted additional time to do so. The court meticulously admonished defendant about the charge against him, the range of possible sentences, his right to a trial, and the rights he was waiving if he pleaded guilty. Defendant indicated he understood and wanted to plead guilty. He acknowledged his signature on the waiver of trial and plea of guilty form. He also signed the plea agreement. Defendant heard the factual basis for the plea. He acknowledged the plea agreement meant a recommended sentence of four years in DOC, to be served consecutive to the sentence he was currently serving. He

assured the court he had not been offered anything else, had not been threatened, and had not consumed anything which would cause him to be confused. He further assured the court he was pleading guilty of his own free will because he was in fact guilty.

¶ 25 At the hearing on the motion to withdraw, defendant made no allegations of confusion about the information Bertram provided him regarding the plea, the terms of the plea agreement, or the plea hearing. Defendant made no claims of any unfulfilled promises relating to the agreement. He was fully informed of his rights and the consequences of his plea. He was not rushed and there was no confusion or coercion of any kind. At defendant's request, Bertram negotiated a plea agreement for less prison time than an earlier plea and one which was less than the maximum available sentence. Defendant's claim is based on the bare allegation he is not guilty because he was acting in self-defense. The factual basis for the plea and an attachment to defendant's motion to withdraw rebut defendant's claim of innocence.

¶ 26 We find no manifest injustice under the facts of this case. Therefore, we find no abuse of discretion in the trial court's denial of the motion to withdraw the plea.

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated, we affirm the trial court's denial of defendant's motion to withdraw his guilty plea. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2014).

¶ 29 Affirmed.