

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).

2017 IL App (4th) 150362-U

NO. 4-15-0362

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

April 5, 2017
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
LAMEL T. JOHNSON,)	No. 14CF293
Defendant-Appellant.)	
)	Honorable
)	Scott Daniel Drazewski,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Steigmann and Knecht concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed, concluding the trial court acted within its discretion in denying defendant's motion to withdraw his guilty plea.
- ¶ 2 In October 2014, defendant, Lamel T. Johnson, waived his right to a jury trial after the trial court admonished him, "if you give up your right to trial by jury today, you can't change your mind later in this case and ask for it back." Defendant subsequently entered an open plea to the charge of unlawful possession of a controlled substance with the intent to deliver (720 ILCS 570/401(c)(2) (West 2012)), and the court sentenced him to 15 years' imprisonment. Thereafter, defendant filed a motion to withdraw his guilty plea, which the court denied.
- ¶ 3 Defendant appeals, asserting the trial court abused its discretion by denying his motion to withdraw his guilty plea because he entered that plea of guilty under his misapprehension of the law that his jury waiver was irrevocable. We disagree and affirm.

¶ 4

I. BACKGROUND

¶ 5

In March 2014, the State charged defendant with (1) unlawful possession of a controlled substance with the intent to deliver (720 ILCS 570/401(c)(2) (West 2012)); (2) unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2012)); and (3) unlawful delivery of a controlled substance (720 ILCS 570/401(c)(2) (West 2012)). At an October 2014 pretrial conference, defendant expressed his desire to waive his right to a jury trial. The trial court admonished defendant as to the nature of the charges, the sentencing ranges, and the nature of a jury trial. The court then admonished, "Do you understand that if you give up your right to trial by jury today, you can't change your mind later in this case and ask for it back; do you understand that?" Defendant responded affirmatively. Following these admonishments, the court found defendant had entered into an understanding and voluntary waiver of his right to a jury trial.

¶ 6

On the date of defendant's bench trial, the parties presented a plea agreement to the trial court. Defendant entered an open plea to count I (unlawful possession of a controlled substance with the intent to deliver). Following a sentencing hearing, the court sentenced defendant to 15 years' imprisonment.

¶ 7

In February 2015, defendant filed a motion to withdraw his guilty plea, alleging "at the time of his entry of his plea of guilty in this cause [he] failed to understand the possible consequences of his plea and the effect thereof." Defendant attached no affidavits or other exhibits to his motion. During the April 2015 hearing on the motion, defense counsel repeated the statement in defendant's motion to withdraw his guilty plea and further stated defendant "would not like to add any argument other than what's included in our motion." The trial court subsequently denied defendant's motion.

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 On appeal, defendant contends the trial court abused its discretion by denying his motion to withdraw his guilty plea because he entered that plea of guilty under his misapprehension of the law that his jury waiver was irrevocable. Specifically, defendant argues the court improperly admonished, "Do you understand that if you give up your right to trial by jury today, you can't change your mind later in this case and ask for it back ***?"

¶ 11 The State asserts defendant forfeited this argument on appeal because he failed to raise this issue before the trial court. See *People v. Thompson*, 238 Ill. 2d 598, 611, 939 N.E.2d 403, 412 (2010). Defendant asserts the general nature of the motion to withdraw his guilty plea preserved this issue on appeal. However, defendant's assertion in his motion to withdraw his guilty plea—that he failed to understand the consequences of his plea—has nothing to do with defendant's claim on appeal that he misapprehended the law regarding jury waiver. Defendant's argument is therefore forfeited. Regardless, we may consider a forfeited claim where the defendant demonstrates plain error. *Id.* To prove plain error, a defendant must first demonstrate a clear or obvious error occurred. *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 411 (2007).

¶ 12 In this case, to demonstrate error, defendant must show an improper admonishment by the trial court caused his misapprehension of the law. To the extent we are reviewing the legal issue of whether the trial court gave an improper admonishment regarding defendant's jury waiver, our review is *de novo*. *People v. Bracey*, 213 Ill. 2d 265, 270, 821 N.E.2d 253, 256 (2004). Ultimately, the abuse of discretion standard applies to our review of the court's denial of defendant's motion to withdraw his guilty plea. *People v. Delvillar*, 235 Ill. 2d

507, 519, 922 N.E.2d 330, 338 (2009). By establishing an error in the court's admonishment, defendant would demonstrate an abuse of discretion in the denial of his motion to withdraw his guilty plea. *Id.* "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." *Id.*

¶ 13 To succeed on a motion to withdraw a guilty plea, the defendant must demonstrate "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." *Id.* at 520, 922 N.E.2d at 338. Defendant claims he entered a plea of guilty while under a misapprehension of the law that his jury waiver was irrevocable. "Where the defendant has claimed a misapprehension of the facts or of the law, the misapprehension must be shown by the defendant." *Id.*

¶ 14 In the present case, the record contains no evidence that defendant entered into the plea through a misapprehension of the law regarding his jury waiver. Rather, the sole assertion defendant made in his motion to withdraw his guilty plea was as follows: "at the time of his entry of his plea of guilty in this cause [he] failed to understand the possible consequences of his plea and the effect thereof." Defendant's motion to withdraw his guilty plea contained no affidavit wherein defendant asserted he entered into his guilty plea under the misapprehension that his jury waiver was irrevocable. Nor did defendant raise this issue in the trial court during the hearing on the motion to withdraw his guilty plea. Thus, defendant provided the court with no basis in the record for finding that he entered into his plea based on a misapprehension of the law.

¶ 15 Regardless, defendant has failed to demonstrate the trial court improperly admonished him regarding his jury waiver. A criminal defendant has a fundamental right to a jury trial. *People v. Bannister*, 232 Ill. 2d 52, 65, 902 N.E.2d 571, 581 (2008). However, a defendant may waive his right to a jury trial by executing a knowing and voluntary waiver of that right. *Id.* There is no specific admonishment the trial court must provide before accepting a defendant's waiver; rather, the effectiveness of the waiver is dependent upon the facts and circumstances of the particular case. *People v. Reed*, 2016 IL App (1st) 140498, ¶ 7, 48 N.E.3d 290. "When a defendant waives the right to a jury trial, the pivotal knowledge that the defendant must understand—with its attendant consequences—is that the facts of the case will be determined by a judge and not a jury." *Bannister*, 232 Ill. 2d at 69, 902 N.E.2d at 583.

¶ 16 In this particular case, defendant does not contest that he understood a judge, rather than a jury, would determine his case. Rather, he argues the trial court improperly admonished him that he could never get his jury waiver back. See *People v. Chapple*, 291 Ill. App. 3d 574, 578, 683 N.E.2d 1001, 1004 (1997) ("A change in circumstances can sometimes entitle a defendant to withdraw a jury waiver."). However, by stating defendant could not later change his mind and withdraw his waiver, the court "imposed a disincentive to the decision to surrender the right to a jury." *People v. Todd*, 178 Ill. 2d 297, 318, 687 N.E.2d 998, 1007 (1997). The admonishment impressed upon defendant the significance of his decision, which would have made the waiver of defendant's right to a jury trial less likely, not more likely. See *id.* Thus, the court's admonishment was generally correct in that a defendant cannot simply change his mind and withdraw his jury waiver.

¶ 17 Accordingly, we conclude the trial court did not improperly admonish defendant regarding the waiver of his right to a jury trial. Therefore, the court did not abuse its discretion by denying defendant's motion to withdraw his guilty plea.

¶ 18 III. CONCLUSION

¶ 19 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we grant the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2014).

¶ 20 Affirmed.