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NO. 4-17-0291

FILED
December 18, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MYRA L. OSBORNE, Defendant-Appellant.	)	Appeal from Circuit Court of Greene County No. 10CF48 Honorable James W. Day, Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not err in denying defendant's motion to withdraw her guilty plea.

¶ 2 In March 2011, defendant, Myra L. Osborne, pleaded guilty to one count of first degree murder, and the trial court sentenced her to 30 years in prison. In January 2017, defendant filed a second amended motion to withdraw her guilty plea, which the court denied.

¶ 3 On appeal, defendant argues the trial court erred in denying her motion to withdraw her guilty plea. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In March 2010, the State charged defendant by information with three counts of the first degree murder of Carol Andrews (counts I, II, and III). 720 ILCS 5/9-1(a)(1), (a)(2), (a)(3) (West 2010). Count II alleged defendant committed the offense of first degree murder in

that she, without lawful justification, duct-taped Andrews' nose and mouth, knowing said act would create a strong probability of death or great bodily harm to Andrews, thereby causing her death. The State also charged defendant with single counts of residential burglary (count IV) (720 ILCS 5/19-3 (West 2010)), unlawful use of a credit card (count V) (720 ILCS 250/8 (West 2010)), and receiving the debit card of another (count VI) (720 ILCS 250/4 (West 2010)).

¶ 6 Defense counsel filed a motion for the appointment of an expert to determine whether defendant, because of a mental or physical condition, was unable to understand the nature and purpose of the proceedings against her or assist in her defense. The trial court approved the appointment of an expert.

¶ 7 Dr. Terry Killian conducted a forensic psychiatric evaluation of defendant in October 2010. Defendant told Dr. Killian her husband had physically abused her during their marriage. While finding her fit to stand trial, Dr. Killian stated his "only concern" centered on defendant's clinical depression and her "chronic emotional detachment from chronic domestic violence." Dr. Killian stated "[t]he only issue that might significantly interfere in her willingness to assist [counsel] more completely is her marked emotional dependence on her husband and her resultant desire to protect [him.]"

¶ 8 In March 2011, defendant agreed to plead guilty to count II, and the State agreed to dismiss the remaining counts. At the plea hearing, the trial court and defendant engaged in the following discussion:

> "THE COURT: Okay. Are you taking any medication now?
>
> [THE DEFENDANT]: Yes.
>
> THE COURT: What kind?

[THE DEFENDANT]: Cymbalta, Zantac and Enalapril.

THE COURT: Do you think that affects your ability to understand what's going on here today?

[THE DEFENDANT]: No.

THE COURT: All right. The State's Attorney tells me that you plan to plead guilty to the charge of first degree murder. It states in Count II that on or about March 18, 2010, you committed the offense of first degree murder in that you, without lawful justification, duct-taped [the victim's] nose and mouth knowing said act would create a strong probability of death or great bodily harm to [the victim] thereby causing the death of [the victim]. A couple questions there. One, do you understand that charge?

[THE DEFENDANT]: Yes, sir.

THE COURT: Is that the one you plan to plead guilty to?

[THE DEFENDANT]: Yes, sir.

THE COURT: Tell me what the deal is here that's been worked out. I just want you to say it so I can be certain you understood it.

[THE DEFENDANT]: I am agreeing [to] a plea bargain of 30 years in prison."

¶ 9 Thereafter, the trial court discussed the rights defendant would be waiving by pleading guilty. Defendant indicated she understood her rights. Following the State's factual basis, the following exchange occurred:

"THE COURT: Um-huh. All right. Well, let me ask you, [defendant], we've talked about this plea agreement. Has anybody threatened you in any way to get you to do this deal?

[THE DEFENDANT]: No sir.

THE COURT: Anybody promise you anything other than this plea agreement?

[THE DEFENDANT]: No, sir.

THE COURT: So are you doing it freely, voluntarily?

[THE DEFENDANT]: Yes, sir.

THE COURT: All right. I—Based on the assurances made by the State's Attorney that the relatives of the victim have concurred in this proposed sentence, I will tell you that I can go along with it. But here at the last minute you still have a chance to change your mind if you wish. Do you think you want to do the deal or do you want to change your mind?

[THE DEFENDANT]: No, this is fine."

Thereafter, defendant pleaded guilty, and the court sentenced her to 30 years in prison.

¶ 10 Less than a month later, defendant filed a motion to withdraw her guilty plea. Therein, defendant alleged she did not understand the nature and consequences of her plea and "was unable to freely and voluntarily enter into a plea as a result of years of physical abuse."

¶ 11 In November 2014, newly appointed counsel filed an amended motion to withdraw defendant's guilty plea. Therein, defendant alleged she did not understand the nature and consequences of her plea due to her mental condition and "having suffered years of physical

abuse by her husband." Defendant also alleged she did not freely and voluntarily enter her plea "due to years of physical abuse, threats[,] and coercion by her husband to take the blame for the offense herein, which she would not have pleaded guilty herein."

¶ 12 In her affidavit, defendant stated her former husband "commanded" that she commit the offense and "threatened serious physical harm or death" if she did not do it. Defendant also asserted her husband "commanded" her to take the blame for the offense, absolve him of the offense, or "he would cause serious harm or death" to her. Defendant stated she only pleaded guilty because she was "afraid [her] former husband would harm or kill" her if she did otherwise.

¶ 13 At the hearing on the amended motion, defendant testified she did not understand the trial court's admonishments when she pleaded guilty and only indicated otherwise because her ex-husband told her to do so. Defendant stated her husband would beat her "at least three times a week" during the course of their marriage and told her he would kill her if she did not do what he said. He planned the crime and told defendant to kill the victim when she could not find the money. Defendant stated she feared for her life because her husband "always" threatened to kill her if she did not do what he said. Thus, she took the blame for the crime and never mentioned his involvement. When asked about the court's question at the plea hearing as to whether any threats or promises had been made to her, defendant stated she responded in the negative because she "thought it meant the State's Attorney or whatever," not her husband.

¶ 14 The trial court found no error at the guilty plea hearing and denied defendant's motion to withdraw her guilty plea. Defendant appealed, and this court entered an order remanding the matter for the filing of a certificate in compliance with Illinois Supreme Court Rule 604(d) (eff. Mar. 8, 2016). In January 2017, defense counsel filed a second amended

motion to withdraw defendant's guilty plea and a Rule 604(d) certificate. The court again denied the motion to withdraw the guilty plea. This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 Defendant argues the trial court erred in denying her motion to withdraw her guilty plea, claiming her abusive husband coerced her into entering the plea and rendered it involuntary. We disagree.

¶ 17 "For a guilty plea to be constitutionally valid, the record must reflect that a defendant's guilty plea was intelligently and voluntarily made." *People v. Blankley*, 319 Ill. App. 3d 996, 1007, 747 N.E.2d 16, 25 (2001). To determine whether a plea has been voluntarily and intelligently entered, Illinois Supreme Court Rule 402(a) (eff. July 1, 2012) requires the trial court to admonish the defendant on the nature of the crime charged, the sentencing range, and the rights the defendant gives up by pleading guilty. Rule 402(b) (eff. July 1, 2012) also requires the court to "determine whether any force or threats or any promises, apart from a plea agreement, were used to obtain the plea." That said, a guilty plea may not be obtained by threats, coercion, or improper promises. *People v. Pequeno*, 337 Ill. App. 3d 537, 544, 786 N.E.2d 1071, 1076 (2003); see also *People v. Griffin*, 16 Ill. App. 3d 351, 353, 306 N.E.2d 63, 64-65 (1973) (stating "if a guilty plea is induced by coercion, threats, or force, which deprives it of the character of a voluntary act, it is void").

¶ 18 "A defendant has no absolute right to withdraw his guilty plea." *People v. Hughes*, 2012 IL 112817, ¶ 32, 983 N.E.2d 439. Instead, a "defendant must show a manifest injustice under the facts involved." *People v. Delvillar*, 235 Ill. 2d 507, 520, 922 N.E.2d 330, 338 (2009).

" 'Where it appears that the plea of guilty was entered on a

> misapprehension of the facts or of the law, or in consequence of misrepresentations by counsel or the State's Attorney or someone else in authority, or the case is one where there is doubt of the guilt of the accused, or where the accused has a defense worthy of consideration by a jury, or where the ends of justice will be better served by submitting the case to a jury, the court should permit the withdrawal of the plea of guilty and allow the accused to plead not guilty.' " *People v. Davis*, 145 Ill. 2d 240, 244, 582 N.E.2d 714, 716 (1991) (quoting *People v. Morreale*, 412 Ill. 528, 531-32, 107 N.E.2d 721, 723 (1952)).

¶ 19 A trial court has discretion to permit a defendant to withdraw his guilty plea, and that decision will not be reversed on appeal absent an abuse of discretion. *People v. Manning*, 227 Ill. 2d 403, 411-12, 883 N.E.2d 492, 498 (2008). "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." *Delvillar*, 235 Ill. 2d at 519, 922 N.E.2d at 338.

¶ 20 In the case *sub judice*, the trial court held a colloquy with defendant pursuant to Rule 402, admonishing her on the nature of the charge, the minimum and maximum penalty, her right to plead not guilty, and the trial rights she would be waiving if she pleaded guilty. Defendant indicated she understood the admonishments. When the court asked defendant if she was taking any medications, she responded yes but stated they did not affect her ability to understand the proceedings. In response to the court's query as to her understanding of the plea deal, defendant stated she was "agreeing [to] a plea bargain of 30 years in prison." The court and defendant also engaged in the following discussion:

"THE COURT: Um-huh. All right. Well, let me ask you, [defendant], we've talked about this plea agreement. Has anybody threatened you in any way to get you to do this deal?

[THE DEFENDANT]: No sir.

THE COURT: Anybody promise you anything other than this plea agreement?

[THE DEFENDANT]: No, sir.

THE COURT: So are you doing it freely, voluntarily?

[THE DEFENDANT]: Yes, sir."

¶ 21 We find the trial court did not abuse its discretion in denying defendant's motion to withdraw her guilty plea. The transcript of the plea hearing indicates defendant knowingly and voluntarily entered her plea, and nothing indicates she pleaded guilty against her will. To disregard defendant's responses and find otherwise would frustrate the purposes of the court's admonishments under Rule 402 and reduce the required colloquy to a meaningless exercise.

¶ 22 Defendant relies in large part on the First District's decision in *People v. Urr*, 321 Ill. App. 3d 544, 748 N.E.2d 235 (2001). At the guilty plea hearing in that case, the trial court asked the defendant if he was pleading guilty of his own free will. *Urr*, 321 Ill. App. 3d at 546, 748 N.E.2d at 237. The defendant confirmed he was pleading guilty voluntarily, but at his later statement in allocution, he stated his sole reason for pleading guilty was because he had been sexually assaulted in jail. *Urr*, 321 Ill. App. 3d at 546, 748 N.E.2d at 237. The defendant told the court he was pleading guilty even though he did nothing wrong and stated he had no other choice but to plead guilty. *Urr*, 321 Ill. App. 3d at 546, 748 N.E.2d at 237. The defendant later filed a motion to withdraw guilty plea, alleging he was under duress at the time he entered the

plea. *Urr*, 321 Ill. App. 3d at 546, 748 N.E.2d at 237. The court denied the motion. *Urr*, 321 Ill. App. 3d at 547, 748 N.E.2d at 238.

¶ 23 On appeal, the First District noted a defendant's claim he pleaded guilty due to prison conditions does not necessarily mean the plea was involuntarily entered. *Urr*, 321 Ill. App. 3d at 547, 748 N.E.2d at 238. Instead, the court found a "[d]efendant must allege a specific instance of abuse, which caused him to plead guilty, and he must sufficiently establish a nexus between the alleged violence and his guilty plea." *Urr*, 321 Ill. App. 3d at 547, 748 N.E.2d at 238. In finding the trial court erred in denying the defendant's motion to withdraw his guilty plea, the First District noted the defendant maintained his innocence throughout the proceedings and told the court he was only pleading guilty because of the sexual assaults and daily threats he received in the jail, he had no other choice, and he did not want to die. *Urr*, 321 Ill. App. 3d at 548, 748 N.E.2d at 238. The court concluded as follows:

> "Defendant alleged specific acts of violence in claiming he was sexually assaulted, urine was thrown at him, and his life was threatened. At the plea proceeding, he specifically told the court that these incidences were the reason he was pleading guilty. As a result, he has established the nexus required by these cases." *Urr*, 321 Ill. App. 3d at 548, 748 N.E.2d at 239.

¶ 24 We find *Urr* readily distinguishable. Here, defendant did not maintain her innocence throughout the proceeding and did not tell the trial court she sought to plead guilty because of her abusive husband. Nothing in the plea hearing indicates defendant was coerced to plead guilty or was under duress in doing so. In fact, defendant did not raise her allegation of coercion until she was in prison. While defendant contended she did not raise her claim until she

felt “free” and “safe” in prison, she had been in custody for over a year prior to pleading guilty and had not been in contact with her husband for over a month. As this evidence falls far short of the nexus required between a guilty plea and any specific instances of abuse, we find the trial court did not err in denying defendant’s motion to withdraw her guilty plea.

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we affirm the trial court’s judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 27 Affirmed.