2019 IL App (4th) 180019-U

NOS. 4-18-0019 & 4-18-0020

FILED
January 2, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
TYRONE LEE McKINNEY,	)	No. 16CF272
Defendant-Appellant.	)	16CF1165
	)	
	)	Honorable
	)	Paul G. Lawrence,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Knecht and Cavanagh concurred in the judgment.

ORDER

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

¶ 2 In June 2017, defendant, Tyrone Lee McKinney, entered fully negotiated guilty pleas to one count of domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2014)) and one count of unlawful delivery of a controlled substance (720 ILCS 570/401(c)(2) (West 2014)). Pursuant to defendant's plea agreement with the State, the trial court sentenced him to eight years in the Illinois Department of Corrections (DOC) and recommended him for DOC's impact incarceration program (impact incarceration). In October 2017, defendant filed an amended motion to withdraw his pleas, arguing he misapprehended his eligibility for impact incarceration and the State fraudulently induced him into pleading guilty. The court denied defendant's motion, and he ap-

peals. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In March 2016, the State charged defendant in case No. 16-CF-272 with one count of aggravated battery (720 ILCS 5/12-3.05(b)(2) (West 2014)). Later, it added a second count charging defendant with domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2014)). In October 2016, the State charged defendant in case No. 16-CF-1165 with one count of unlawful delivery of a controlled substance (720 ILCS 570/401(c)(2) (West 2014)).

¶ 5 In June 2017, the trial court conducted a hearing in both cases. At the hearing, the parties submitted a fully negotiated plea agreement, under which defendant agreed to plead guilty to domestic battery and unlawful delivery of a controlled substance and to receive an eight-year prison sentence. In exchange for defendant's pleas, the State agreed to the dismissal of defendant's aggravated battery charge. The parties' plea agreement contained a stipulation that defendant's prior criminal record consisted of three prior convictions for Class 2 felonies—two burglary convictions and one aggravated battery conviction.

¶ 6 At the hearing, defendant also indicated his desire to participate in impact incarceration, and the following colloquy occurred with respect to defendant's eligibility for the program:

> "THE COURT: All right. Do you agree, Miss Reynolds [(assistant State's Attorney)], that this is a Class X Felony sentencing case?
>
> MS. REYNOLDS: Yes, Your Honor, because of his priors. He has two prior Class Twos. He actually has three prior Class Twos. He is sentenced as a Class X Felony offender. It is not a Class X Felony charge obviously.

THE COURT: Is he still eligible for [impact incarceration]?

MS. REYNOLDS: The [impact incarceration] indicates [*sic*] according to the statute that [if] you are convicted of a Class X Felony you are not eligible. So based on that caveat, I believe that he is still eligible.

THE COURT: Do you agree, Mr. Gregory [(defense counsel)]?

MR. GREGROY: Yes, I've spoken with DOC about it.

THE COURT: You have?

MR. GREGORY: Yes."

The trial court further noted that defendant and his attorney signed a consent for impact incarceration, and defendant asserted that he had gone over the requirements of the program with his attorney. The court then questioned defendant as follows:

"THE COURT: I understand you've signed this, but I want to make sure that you understand that if, first of all, [DOC] has to accept you into [impact incarceration]. Do you understand that?

THE DEFENDANT: I do.

THE COURT: Just because I say that you qualify does not mean that they will accept you. Do you understand that?

THE DEFENDANT: I do.

* * *

THE COURT: Any questions about impact incarceration?

THE DEFENDANT: No, I have a full understanding."

¶ 7 The record contains a copy of the "OFFENDER'S CONSENT TO IMPACT IN-

CARCERATION" signed by defendant and his attorney. The form states defendant agreed and consented to participate in impact incarceration. It further states at follows:

> "I understand that my commitment to the Impact Incarceration Program is entirely dependent upon the decision of [DOC] and is not guaranteed by the court's recommendation.
>
> I understand that I have been recommended by the court for this program but may *not* be accepted by [DOC] for participation in the Impact Incarceration Program.
>
> * * *
>
> I understand that the Impact Incarceration Program may be terminated by [DOC] at any time. I also understand that if I violate any terms or conditions of the program or if, for any reason, I am unable to participate in the program, I will be returned to an adult correctional facility of [DOC] to serve the balance of my sentence in this case, being a term of [eight] years in [DOC].
>
> * * *
>
> I understand that if I am not accepted into the Impact Incarceration Program I will serve the sentence of [eight] years in an adult correctional facility of [DOC].
>
> I have read the above in its entirety and I understand the terms and conditions set forth above." (Emphasis in original.)

¶ 8 At the plea agreement hearing, the trial court provided further admonishments to defendant and received the factual basis for each plea. Ultimately, the court accepted defendant's

guilty pleas, finding they were knowingly and voluntarily made. The court sentenced defendant to eight years in prison. It also entered a supplemental sentencing order, stating that defendant met the eligibility requirements for impact incarceration and recommending and approving him for placement in the program.

¶ 9 In July 2017, defendant wrote a letter to the trial court, asserting he had not yet been placed in impact incarceration and requesting to withdraw his guilty pleas "[i]f [he had] been denied." In October 2017, defendant filed an amended motion to withdraw his guilty pleas with the aid of counsel. He alleged his plea agreement included a recommendation by the court that he be placed in impact incarceration. Defendant maintained that prior to entering his guilty pleas, his counsel contacted DOC on four occasions and was advised each time that his criminal history did not render him ineligible for the program. He further asserted the belief that the State also verified his eligibility "based upon his criminal history." According to defendant, both he and his counsel had the understanding that he was statutorily eligible for the program. Nevertheless, DOC "refused to place [him] in the *** program" and the only basis provided by DOC for its refusal was defendant's "criminal history."

¶ 10 Defendant asked that the trial court allow him to withdraw his pleas on the basis that they were the result of fraudulent inducement by the State. In particular, defendant alleged that he was advised by the State—through state statutes, DOC rules and regulations, and by statements made at the plea agreement hearing—that he was eligible for impact incarceration "based upon his criminal history" but then denied entry and deemed "not eligible for the program based upon his criminal history" after entering his guilty pleas.

¶ 11 Defendant further maintained that he "misapprehended the sentence that was

available to him," rendering his plea involuntary. Specifically, defendant alleged he "misapprehended the fact that he was eligible for [impact incarceration]."

¶ 12 In November 2017, defendant filed an affidavit in support of his request. He averred that in June 2017, he "agreed to a plea" and "was advised that [he] was eligible for [impact incarceration] and was recommended for placement into th[e] program by [the trial court]." Defendant maintained that he would not have pleaded guilty if he had been ineligible. Defendant further asserted as follows:

> "4. [DOC] has refused to place me into [impact incarceration];
>
> 5. The only explanation that I have received from [DOC] for refusal to place me into the program is that my criminal history prevents me from being placed into the program[.]"

¶ 13 The same month, the State filed a response to defendant's motion. It maintained defendant was statutorily eligible for impact incarceration but was never guaranteed acceptance into the program. The State further alleged that defendant was properly admonished regarding the effect of the trial court's recommendation and indicated his understanding that his acceptance into the program was not guaranteed.

¶ 14 In December 2017, the trial court conducted a hearing on defendant's motion to withdraw his guilty pleas. Defendant testified on his own behalf, stating he would not have pleaded guilty without a recommendation by the court for impact incarceration. Further, he asserted that, when he pleaded guilty, he understood that "based on [his] criminal history [he was] eligible for placement into [impact incarceration]." However, after being transferred to DOC, he was not placed into the program. The only reason given to him by DOC was that he was "ineli-

gible due to [his] criminal history."

¶ 15 Following the parties' arguments, the trial court denied defendant's motion. In reaching its decision, the court found that there was "a difference between being eligible and actually being accepted into" impact incarceration and it was clear that defendant understood there was a difference.

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 On appeal, defendant argues the trial court abused its discretion by denying his motion to withdraw his guilty pleas. He contends that although he pleaded guilty based on the understanding that his criminal history did not render him ineligible for impact incarceration, his criminal history ultimately prevented him from being placed into the program. Thus, he maintains he pleaded guilty "based on a false understanding" of his eligibility for impact incarceration and should be allowed to withdraw his guilty pleas.

¶ 19 "A defendant has no absolute right to withdraw his guilty plea." *People v. Hughes*, 2012 IL 112817, ¶ 32, 983 N.E.2d 439. "Rather, he must show a manifest injustice under the facts involved." *Id.* "Withdrawal is appropriate where the plea was entered through a misapprehension of the facts or of the law or where there is doubt as to the guilt of the accused and justice would be better served through a trial." *Id.* Whether to grant or deny a motion to withdraw is within the trial court's discretion and, thus, reviewed for an abuse of discretion. *Id.*

¶ 20 The Unified Code of Corrections (Code) (730 ILCS 5/5-8-1.1(a) (West 2014)) authorizes DOC to "establish and operate an impact incarceration program for eligible offenders." If the trial court finds that a felony offender meets the eligibility requirements, "the court

may in its sentencing order approve the offender for placement in the impact incarceration program conditioned upon his acceptance in the program by [DOC]." *Id.* To be eligible to participate in impact incarceration, the offender must meet the following requirements:

> "(1) The person must be not less than 17 years of age nor more than 35 years of age.
>
> (2) The person has not previously participated in the impact incarceration program and has not previously served more than one prior sentence of imprisonment for a felony in an adult correctional facility.
>
> (3) The person has not been convicted of a Class X felony, first or second degree murder, armed violence, aggravated kidnapping, criminal sexual assault, aggravated criminal sexual abuse or a subsequent conviction for criminal sexual abuse, forcible detention, residential arson, place of worship arson, or arson and has not been convicted previously of any of those offenses.
>
> (4) The person has been sentenced to a term of imprisonment of 8 years or less.
>
> (5) The person must be physically able to participate in strenuous physical activities or labor.
>
> (6) The person must not have any mental disorder or disability that would prevent participation in the impact incarceration program.
>
> (7) The person has consented in writing to participation in the impact incarceration program and to the terms and conditions thereof.
>
> (8) The person was recommended and approved for placement in the impact incarceration program in the court's sentencing order." 730 ILCS 5/5-8-1.1(b) (West

2014).

Additionally, in determining whether to accept an eligible committed person into impact incarceration, DOC may consider "[t]he committed person's criminal history, including outstanding warrants or detainers." 20 Ill. Adm. Code 460.30 (1994).

¶ 21 Here, defendant maintains he was "clearly misinformed of his sentencing options" because he was advised, and believed, that his criminal history did not render him ineligible for impact incarceration but he was, nevertheless, denied entry into the program because of his criminal history. To support his argument, defendant relies heavily on the supreme court's decision in *People v. Davis*, 145 Ill. 2d 240, 582 N.E.2d 714 (1991). There, the defendant pleaded guilty to burglary and was sentenced to 10 years in prison. *Id.* at 242-43. He later moved to withdraw his plea based on an alleged misunderstanding as to his eligibility for the Treatment Alternatives to Street Crimes (TASC) program. *Id.* at 243-44. The defendant maintained he was initially advised that he was eligible for the TASC program. *Id.* at 245. However, after his plea was entered, he was informed that he was ineligible for the program. *Id.* The trial court denied the defendant's motion to withdraw, and he appealed. *Id.* at 243.

¶ 22 In addressing the defendant's alleged misapprehension of his TASC eligibility, the supreme court noted that the trial court was never informed that defendant's *qualification* for TASC was part of the parties' plea agreement, even though the "court twice requested the terms of the agreement." *Id.* at 246. It found that, according to the record, the parties "agreed that the State would drop [a] residential burglary charge, the defendant would plead guilty to the burglary charge, the State could argue for an extended-term sentence, and the defendant would apply for TASC." *Id.* Thus, once the trial "court accepted the plea, set the sentencing hearing and, per [the]

defendant's request, referred the matter to TASC," it could "be argued that any purported agreement had been fulfilled." *Id.*

¶ 23 Nevertheless, the supreme court noted that the defendant had also been incorrectly admonished that he was eligible for a sentence of probation. *Id.* at 247-48. It stated the trial court "never explained to [the] defendant the mandatory prison sentence facing him" and, "[t]hus, it [was] likely that the defendant never fully understood the range of penalties which he was subject to at the time of the plea." *Id.* at 248. The court stated that its finding of reversible error was "substantially based" on the trial court's improper admonishments. *Id.* at 247. It concluded as follows:

> "We find that [the] defendant's claimed misapprehension as to his eligibility for TASC, alone, may be insufficient to disturb the trial court's ruling, as the denial of the defendant's motion to withdraw his plea did not appear to amount to an abuse of the court's discretion. However, coupled with the fact that the trial court gave incorrect admonishments, which further led the defendant to believe that he would be eligible for a sentence other than incarceration, we find there to be plain error present on the part of the trial court." *Id.* at 251.

¶ 24 We find *Davis* is distinguishable from the present case. In particular, although defendant maintains he was "clearly misinformed" as to his sentencing options, he has not presented any reasoned argument as to what makes him statutorily ineligible for impact incarceration. Rather, based on the record presented, he appears to meet statutory eligibility requirements. Additionally, defendant was fully informed that eligibility for impact incarceration did not equal acceptance and he presents no other argument that, like the defendant in *Davis*, he was improper-

ly admonished.

¶ 25 We find this case more similar to this court's decision in *People v. Manoharan*, 394 Ill. App. 3d 762, 916 N.E.2d 134 (2009). In that case, the defendant argued that his counsel "was ineffective for failing to inform him that DOC had a rule that precluded him from participating in [impact incarceration] because of his citizenship status." *Id.* at 770. However, this court disagreed, noting that the defendant did not argue that he did not meet one of the statutory requirements for eligibility and that, even assuming a blanket rule regarding citizenship status existed, the defendant was not prejudiced because he "knew that DOC had discretion to discharge him from the program at any time and for any reason." *Id.* Further, we stated as follows:

> "Here, the trial court merely recommended that DOC consider [the] defendant for impact incarceration as a legislatively enacted substitute for his two concurrent six-year sentences. DOC had no obligation to include [the] defendant in the impact-incarceration program and had the discretion to exclude him for any number of reasons, regardless of his citizenship status. Indeed, [the] defendant signed a written consent to impact incarceration that explicitly stated that there was a chance that he would '*not* be accepted by the [DOC] for participation in the [i]mpact[-][i]ncarceration [p]rogram.' (Emphasis in original.) Moreover, the trial court admonished [the] defendant that he may not be accepted into the program after verifying that he understood the contents of the aforementioned written consent.
>
> Accordingly, [the] defendant could not have been prejudiced by counsel's inaction because [the] defendant was not entitled to participate in the impact-

incarceration program, and he knew it." *Id.* at 770-71.

¶ 26 Here, defendant has simply failed to establish a misapprehension of fact or law. As stated, he presents no argument that he does not meet one of the statutory requirements for eligibility of impact incarceration. Instead, it appears to be undisputed by the parties that defendant meets all of the eligibility requirements set forth in section 5-8-1.1(b) of the Code. As argued by the State, defendant appears to confuse acceptance with eligibility.

¶ 27 Additionally, like in *Manoharan*, the record clearly reflects that defendant was aware that his participation in impact incarceration was conditional upon his acceptance into the program by DOC, even where he was determined eligible by the trial court and received the court's recommendation. The record shows defendant was given explicit admonishments regarding impact incarceration and, several times, indicated his understanding that his ability to participate in the program was not guaranteed.

¶ 28 Ultimately, we find this case more similar to *Manoharan* and distinguishable from *Davis*. Accordingly, we find no abuse of discretion by the trial court in denying defendant's motion to withdraw his guilty pleas.

¶ 29 III. CONCLUSION

¶ 30 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we grant the State's request that defendant be assessed $75 as costs for this appeal.

¶ 31 Affirmed.