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IN THE
COURT OF APPEALS OF INDIANA

Charles R. Knight, III,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 27, 2023

Court of Appeals Case No.
22A-CR-1361

Appeal from the Brown Circuit
Court

The Hon. Mary Wertz, Judge

Trial Court Cause No.
07C01-2112-F5-581

Bradford, Judge.

Case Summary

[1] Twice in late 2021, Charles Knight, III, broke and entered his former employer's ice cream shop in Nashville, taking cash each time. The State charged Knight with two counts of Level 5 felony burglary and alleged that he was a habitual offender. Knight and the State entered into a plea agreement that, other than providing that his burglary sentences would be served concurrently and his habitual-offender enhancement would be capped at two years, left sentencing to the discretion of the trial court. Knight pled guilty but later moved to withdraw his guilty pleas, which motion the trial court denied. As part of Knight's sentence, the trial court ordered that he pay restitution to his former employer. Knight contends that the trial court abused its discretion in ordering restitution and in denying his motion to withdraw his guilty pleas. Because we disagree, we affirm.

Facts and Procedural History

[2] On October 15, 2021, Knight used a hammer to break into The Chocolate Moose, an ice cream shop in Nashville where he had previously worked. Knight entered the building and took approximately \$5000.00 from the safe. Later that morning, the store manager saw the obvious signs of entry, called the police, and provided them with a copy of the surveillance footage which had captured the burglary. The manager informed the officer that he recognized the man in the video as Knight, who had been fired a couple of weeks earlier, and that he had not changed the code to the safe since then.

[3] On November 5, 2021, Knight returned to The Chocolate Moose, broke the same window that he had the first time, entered the building, and took approximately \$971.00 from three cash-register drawers. Later that morning, the on-duty manager called the police to report the burglary and provided them with a copy of the surveillance footage. The on-duty manager was able to identify Knight as the suspect based on his neck tattoos.

[4] The State charged Knight with two counts of Level 5 felony burglary and alleged that he was a habitual offender. On April 28, 2022, Knight entered into a plea agreement with the State in which he agreed to plead guilty as charged. In exchange, the State agreed that Knight's sentences would run concurrently and the habitual-offender enhancement would be capped at two years.

[5] The agreement provided, in part, as follows:

Defendant shall plead guilty to **Count I: Burglary, a Level 5 Felony and Count II: Burglary, a Level 5 Felony**. Said counts shall run **concurrently**.

Defendant shall also admit to being a **Habitual Offender** and, by agreement of the parties, serve **2 years** at the Indiana Department of Correction[] consecutive to Counts I & II.

This agreement constitutes the entire agreement of the parties, and no other terms or conditions exist. This entire sentence shall be mandatorily consecutive to **Cause #07C01-1010-FB-0349**.

On Counts I & II, sentencing shall be at the Court's discretion. Both parties shall be free to introduce evidence and make arguments at a sentencing hearing.

[...]

Defendant hereby requests that the Judge make the determination of the existence of any aggravating or mitigating circumstances,

and impose a sentence as it determines, articulating the factors and evidence relied upon.

Defendant shall pay fines and costs, public defender fees and other fees as ordered by the Court.

Appellant's App. Vol. II p. 119 (emphases in original). The plea agreement also contained an acknowledgment of rights section. Knight initialed each provision indicating that he had read and understood his constitutional rights, that he was waiving those rights by pleading guilty, and that his decision to plead guilty was his own free and voluntary choice.

[6] A guilty plea hearing was held the same day. Prior to Knight pleading guilty, the trial court reiterated his constitutional rights and advised Knight of the penalty ranges for a Level 5 felony and the habitual-offender enhancement. Knight indicated that he understood and still wished to plead guilty. The trial court found that Knight understood the nature of the charges against him, the possible penalties associated with those crimes, and that his plea of guilty was made freely and voluntarily. The trial court also found that there was a sufficient factual basis for the guilty plea. The trial court took Knight's plea under advisement, ordered a presentence investigation report be completed, and scheduled a sentencing hearing for May 19, 2022.

[7] On May 18, 2022, Knight moved to withdraw his guilty plea. Knight averred that he had had "time to reflect on the plea of guilty," and that he desired to go to trial because he maintained his innocence, accepted the plea agreement because he had been nervous about going to trial and the sentence he may

receive, and that he had felt pressured to accept the plea agreement given the habitual-offender enhancement. Appellant's App. Vol. II p. 151.

[8] The State objected, arguing that it would be substantially prejudiced if the trial court granted Knight's motion because it had already spent time and money preparing the case for trial before Knight entered the guilty plea and would have to spend additional time and money to prepare the case for a second trial date if the motion were granted. In addition to the cost and time spent preparing, the State also argued that the lead detective planned to retire within the month and that the cost of bringing him back from his retirement destination would be substantial.

[9] A hearing was held on Knight's motion on May 19, 2022. After the presentation of evidence and argument, the trial court denied Knight's motion to withdraw his guilty plea. The trial court reasoned that Knight had understood the allegations to which he had pled guilty, had been aware of his right to a jury trial, had been represented by counsel and had made his decision to plead guilty with the benefit of that counsel, had understood the sentencing ramifications of pleading guilty and the potential penalty ranges, and had understood the bargain he had struck with the State. The trial court also concluded that it had not heard anything during the change-of-plea hearing that would lead it to conclude that Knight had relied on any misinformation in making his guilty plea, had been forced or threatened, or had been made any promises that were later unfulfilled.

[10] During the sentencing hearing, Justin Loveless, the owner of The Chocolate Moose, testified that he had incurred total damages in the amount of \$6490.00. The trial court sentenced Knight to five and one-half years of incarceration for each of his convictions for burglary, to be served concurrently; enhanced one of his convictions by two years due to his status as a habitual offender; and ordered that he pay restitution in the amount of \$6490.00.

Discussion and Decision

I. Restitution

[11] Knight contends that the trial court abused its discretion in ordering that he make restitution because the plea agreement did not specifically allow for it. The concept of plea bargaining contemplates an explicit agreement between the State and defendant which is binding upon both parties when accepted by the trial court. *State ex rel. Goldsmith v. Marion Cnty. Sup. Ct.*, 275 Ind. 545, 552, 419 N.E.2d 109, 114 (1981). Strict adherence to the agreement is essential. *Id.* Once an agreement is accepted, the trial court is precluded from imposing any sentence other than that required by the plea agreement. *Pritscher v. State*, 675 N.E.2d 727, 732 (Ind. Ct. App. 1996). It is well-settled that the trial court “may not change the terms” of the agreement. *Disney v. State*, 441 N.E.2d 489, 493 (Ind. Ct. App. 1982).

[12] As for restitution, a trial court may, as part of the sentence for a felony or misdemeanor, “order the defendant to make restitution to the victim of the crime, the victim’s estate, or the family of a victim who is deceased.” Ind. Code

§ 35-50-5-3(a). A trial court’s order of restitution is reviewed for an abuse of discretion. *Id.* The Indiana Supreme Court has stated on multiple occasions that “restitution is as much a part of a criminal sentence as a fine or other penalty.” *Pearson v. State*, 883 N.E.2d 770, 773 (Ind. 2008) (quoting *Miller v. State*, 502 N.E.2d 92, 95 (Ind. 1986)).

[13] Knight does not dispute the accuracy of the restitution amount he was ordered to pay, arguing only that the trial court abused its discretion by ordering any restitution at all because the plea agreement was silent on the issue. We disagree. The parties retained the right to make arguments as to placement and the length of Knight’s concurrent sentences, and the plea agreement specifically reserved discretion for those items for the trial court. It follows that if the trial court has discretion to determine the severity of the sentence, that discretion includes restitution, which, as mentioned, is part of a criminal sentence. While we do not necessarily agree with the State’s characterization of Knight’s plea as “open,” we do not have to, because it is, for purposes of imposing restitution, open enough. *Collins v. State*, 817 N.E.2d 230, 231 (Ind. 2004) (discussing the concept of an “open” plea as “a plea agreement where the issue of sentencing is left to the trial court’s discretion”).

[14] The fact that Knight’s plea left the trial court with at least some discretion renders his reliance on *Simm v. State*, 693 N.E.2d 78 (Ind. Ct. App. 1998), misplaced. In that case, the trial court was required to order forty years of incarceration—no more, no less—and, as restitution would amount to an increase in the severity of the sentence, it was not allowed pursuant to the terms

of the plea agreement. *See id.* at 79–80. Because the plea agreement in this case reserved discretion as to the severity of Knight’s sentence, our opinions in *Huddleston v. State*, 764 N.E.2d 655 (Ind. Ct. App. 2002), and *Gil v. State*, 988 N.E.2d 1231 (Ind. Ct. App. 2013), are better analogies. In both of those cases, we allowed awards of restitution following guilty pleas—even though the pleas were completely silent on the issue of restitution—because the trial court retained discretion in sentencing, which, as mentioned, encompasses restitution. *See Huddleston*, 764 N.E.2d at 657; *Gil*, 988 N.E.2d at 1235.

[15] The same is true here: The only portions of Knight’s plea agreement that were fixed were the portions relating to the habitual-offender enhancement and the imposition of concurrent sentences for Knight’s two Level 5 felony burglary convictions. The rest of the sentence—which included the ultimate length of the sentence, what portion of that sentence would be executed, where the sentence would be served, and the court costs and fines—was left to the trial court’s discretion. Because the plea agreement in this case specifically allowed the trial court some discretion in sentencing Knight (including the severity), we conclude that it also left the trial court with the discretion to order Knight to pay restitution.

II. Motion to Withdraw Guilty Plea

[16] Knight contends that the trial court abused its discretion in denying his motion to withdraw his guilty plea. After a guilty plea is entered, but before the sentence is imposed, the trial court may permit the defendant to withdraw his guilty plea for any fair and just reason unless the State has been substantially

prejudiced by reliance upon the plea. Ind. Code § 35-35-1-4(b); *Brightman v. State*, 758 N.E.2d 41, 44 (Ind. 2001). The trial court shall grant the motion if the defendant proves, by a preponderance of the evidence, that it is necessary to correct a manifest injustice. Ind. Code § 35-35-1-4(b); *Bland v. State*, 708 N.E.2d 880, 882 (Ind. Ct. App. 1999). Absent a showing of manifest injustice by the defendant, the decision whether to grant or deny the motion rests solely in the trial court’s discretion. Ind. Code § 35-35-1-4(b); *Bland*, 708 N.E.2d at 882. A trial court’s ruling on a motion to withdraw a guilty plea “arrives in this Court with a presumption in favor of the ruling.” *Brightman*, 758 N.E.2d at 44 (citing *Coomer v. State*, 652 N.E.2d 60, 62 (Ind. 1995)); *see also Johnson v. State*, 734 N.E.2d 242, 245 (Ind. 2000).

[17] Here, Knight does not seem to argue that withdrawal of his guilty plea is necessary to correct a manifest injustice, so we are left with determining whether an abuse of discretion has occurred. “In determining whether a trial court has abused its discretion in denying a motion to withdraw a guilty plea, this Court examines the statements made by the defendant at the guilty plea hearing to decide whether the plea was offered ‘freely and knowingly.’” *Jefferies v. State*, 966 N.E.2d 773, 777 (Ind. Ct. App. 2012) (quoting *Brightman*, 758 N.E.2d at 44), *trans. denied*.

[18] The record supports a finding that Knight’s guilty pleas were offered freely and voluntarily. At the change-of-plea hearing on April 28, 2022, Knight unequivocally stated that he wished to plead guilty, the trial court informed him of his rights, Knight indicated that he had “carefully” read and understood the

sixteen-paragraph acknowledgment of rights before initialing each paragraph and signing the form, and he informed the trial court that he understood his rights and that he was entering the guilty plea freely and voluntarily. Tr. Vol. II p. 5. Knight denied receiving any promises or benefits outside the plea agreement or that he was forced, threatened, or otherwise put in fear to plead guilty. In fact, Knight repeated his desire to plead guilty several times. Notably, the trial court specifically informed Knight that he could be sentenced to one to six years of “incarceration” for each of his Level 5 felony burglary convictions, and at no point was the possibility of a community-corrections placement discussed. Tr. Vol. II p. 8.

[19] As it happened, Knight moved to withdraw his guilty pleas on May 18, 2022, or the day before his sentencing hearing. Knight averred that he had had “time to reflect on the plea of guilty” and that he desired to go to trial because he maintained his innocence, had accepted the plea agreement because he was nervous about going to trial and the sentence he might have received, and he had felt pressured to accept the plea agreement given the habitual-offender enhancement. Appellant’s App. Vol. II p. 151. None of the reasons advanced by Knight entitle him to relief.

[20] Knight acknowledges on appeal that his assertion of innocence is the “least important factor” in support of his motion to withdraw his guilty plea. Appellant’s Br. p. 12. Indeed, a defendant’s post-plea assertion of innocence does not require the trial court to set aside an otherwise knowing and voluntary guilty plea. *Beech v. State*, 702 N.E.2d 1132, 1136 (Ind. Ct. App. 1998). Instead,

the trial court retains its discretion to deny such a motion. *Id.* In the end, the trial court was free to credit Knight’s testimony at the change-of-plea hearing and deny his later motion. *See Carter v. State*, 739 N.E.2d 126, 131 (Ind. 2000) (finding trial court did not abuse its discretion by denying request to withdraw plea agreement despite later contradictory factual claims).

[21] Knight also averred that he had felt pressured into accepting the plea agreement because he had been nervous about going to trial and the potential sentence he might have received if convicted. These, however, are not always “just or fair” reasons to set aside a guilty plea because these types of pressures are normal ones that face any defendant when considering a plea offer. As the Indiana Supreme Court has concluded, “[a] plea of guilty entered due to the threat of a higher sentence does not render the plea involuntary.” *Watson v. State*, 526 N.E.2d 701, 703 (Ind. 1998) (citing *Lombardo v. State*, 429 N.E.2d 243, 248 (Ind. 1981)). Knight was made aware of the potential penalty ranges he faced for both the Level 5 felonies and the habitual-offender enhancement before he entered his plea of guilty yet did so willingly.

[22] Knight also claims that his decision to plead guilty changed when he realized that he was not eligible for community corrections. There is no indication, however, that the State ever promised to recommend that Knight be placed in any type of community-corrections program, nor did the trial court indicate that would be a possibility during the guilty plea hearing. That said, even if we were to assume, *arguendo*, that the realization that community corrections was not a possibility is a valid reason to withdraw a guilty plea, the trial court was under

no obligation to credit Knight's assertion in this regard. We think it worth noting that, although Knight had three weeks in which to move to withdraw his guilty pleas, he did not do so until the day before his sentencing hearing, a fact that casts some doubt on the veracity of his assertions. We conclude that Knight has not established that the trial court abused its discretion in denying his motion to withdraw his guilty pleas.

[23] We affirm the judgment of the trial court.

Mathias, J., and Pyle, J., concur.