

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Timothy J. Glenn,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent

September 27, 2021
Court of Appeals Case No.
21A-CR-294

Appeal from the Tippecanoe
Superior Court

The Honorable Steven Meyer,
Judge
Trial Court Cause No.
79D01-2010-F4-64

May, Judge.

[1] Timothy J. Glenn appeals following his conviction of Level 4 felony burglary.¹ Glenn argues the trial court abused its discretion when it denied his request to withdraw his guilty plea. We affirm.

Facts and Procedural History

- [2] On August 25, 2020, the State charged Glenn with Level 5 felony intimidation² under cause number 79D02-2008-F5-146 (“F5-146”). The State also filed a notice of its intent to seek a habitual offender enhancement,³ and the trial court appointed Sandra Corum to represent Glenn in F5-146. Approximately seven weeks later, while Glenn was still incarcerated because of the F5-146 case, the State charged Glenn with Level 4 felony burglary and Class A misdemeanor theft⁴ under cause number 79D01-2010-F4-64 (“F4-64”). The probable cause affidavit in F4-64 alleged that Glenn broke into his ex-girlfriend’s house on August 14, 2020, and stole prescription medications.
- [3] On October 19, 2020, Glenn signed a plea agreement in which he agreed to plead guilty to the Level 4 felony burglary charge, and in exchange, the State agreed that “[a]ny remaining counts herein and the entire case of [F5-146] shall be dismissed at the time of sentencing.” (App. Vol. II at 20.) The agreement

¹ Ind. Code § 35-43-2-1.

² Ind. Code § 35-45-2-1.

³ See Ind. Code § 35-50-2-8.

⁴ Ind. Code § 35-43-4-2.

also specified that Glenn would receive a sentence of not less than six years and not more than nine years of incarceration. Corum signed the plea agreement on October 20, 2020, as Glenn's attorney.

[4] On October 21, 2020, the trial court held a combined hearing in F4-64 and F5-146. On Glenn's behalf, Corum waived initial hearing in F4-64, and she told the court that Glenn intended to enter a guilty plea to the Level 4 felony burglary charge pursuant to the plea agreement. The trial court then questioned Glenn before accepting his guilty plea. Glenn informed the court that he had been diagnosed with bipolar mania and that he was taking Lexapro at the time of the hearing. The court then asked:

THE COURT: Uh-huh. Do you think that this condition that you've stated to me, do you think that would interfere with your ability to understand these proceedings today?

THE DEFENDANT: No, Your Honor.

THE COURT: Are you thinking clearly today?

THE DEFENDANT: Yes, Your Honor.

THE COURT: What about the medication that you're on? Do you think that's gonna affect your ability to understand and participate in these hearings?

THE DEFENDANT: No, Your Honor.

(Tr. Vol. II at 7-8.)

[5] Glenn also acknowledged that he discussed the plea agreement with his attorney before signing it, and he stated that he understood he was waiving certain rights by entering into the plea agreement. The trial court explained:

THE COURT: Alright. And you always have the right to have an attorney represent you through all stages of these proceedings including on appeal and if you cannot afford an attorney, you can ask the Court to consider appointing an attorney for you. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: If [sic] fact, that's what we've done in this case. We've appointed the Public Defender to represent you here?

THE DEFENDANT: Yes, Your Honor.

(*Id.* at 12.) Glenn further affirmed that he was satisfied with the services of his attorney, that no one forced or threatened him into pleading guilty, and that pleading guilty was his own free and voluntary choice.

[6] Corum also questioned Glenn to establish a factual basis:

Q Okay. So, we're gonna talk then about Count I, Burglary as a Level 4 Felony. Now, were you here in Tippecanoe County, State of Indiana on August 14th of 2020?

A Yes.

Q Okay. And who is [J.L.] to you?

A She's a[n] ex-girlfriend.

Q Okay. And, in August, you guys broke up, is that right?

A Correct.

Q Okay. And you were upset, is that right?

A Yes, I was.

Q Okay. And did you break and enter her home on August 14th of 2020?

A Yes, I did.

Q And that would have been . . . in Lafayette, is that right?

A Correct.

Q And you went into her home with the intent, for a theft, or to take something, correct?

A Correct

Q And in this case, you took medications?

A Correct.

Q Okay. And did you not give those medications back?

A No, I did not.

Q And it was your intent to deprive her of those medications?

A Yes, it was.

Q And so, you're pleading guilty to Count I, Burglary today because in fact you are guilty?

A Yes.

(*Id.* at 16-17.) At the conclusion of the hearing, the trial court found:

[Glenn] understands the nature of the charges of which he's plead [sic] guilty. He understands the possible penalties for the charge and [his] plea of guilty has been made freely and voluntarily and that there's a factual basis for the plea. The Court will take the plea and the Plea Agreement under advisement until the time of the sentencing and order the Tippecanoe County Probation Department to prepare a Pre-Sentence Investigation Report.

(*Id.* at 17-18.) The trial court then scheduled a sentencing hearing for December 17, 2020.

[7] On December 9, 2020, Glenn filed a motion to withdraw his guilty plea, and Corum filed a motion to withdraw as counsel for Glenn. Attorney Alicia Pratt then entered an appearance on Glenn's behalf. The State filed an objection to Glenn's motion to withdraw his guilty plea, and the court decided to use the December 17, 2020, hearing to address all the pending motions rather than to sentence Glenn. At the hearing, Glenn informed the trial court that he desired

to proceed pro se, and he tendered a handwritten verified motion to withdraw his guilty plea in place of the motion Corum filed on his behalf. The pro se motion contended that the medications he was prescribed at the time he entered into the plea agreement caused “intoxication and confusion,” and that this impaired his ability to comprehend and meaningfully participate in the proceedings when he pled guilty. (App. Vol. II at 38.) He also asserted that he was denied effective assistance of counsel when Corum waived the initial hearing in F4-64 and that he was not adequately informed regarding his constitutional rights or the nature of the charges against him.

[8] After an inquiry, the trial court granted Glenn’s request to proceed pro se and appointed Pratt as standby counsel. Glenn then chose to testify that he “was on very strong psychotropic medications at the time” he entered into the plea agreement and that he believed he received ineffective assistance of counsel when Corum waived his initial hearing in F4-64. (Tr. Vol. II at 47.) Corum⁵ also testified at the December 17, 2020, hearing. She explained that she was the attorney appointed to represent Glenn in the F5-146 case, and she first met with Glenn at the jail shortly after the State filed charges against him in that case. Corum found a police report of a burglary while reviewing discovery materials produced by the State in the F5-146 case, and Corum learned that the State planned to file charges against Glenn, including Level 4 felony burglary, based

⁵ The trial court found that Glenn partially waived attorney-client privilege by claiming he was not adequately advised prior to entering his guilty plea.

on the events described in the report. Corum then met with Glenn and discussed the forthcoming charges. She explained to Glenn the potential minimum and maximum penalties and how those penalties would increase if the State sought a habitual offender enhancement in connection with the Level 4 felony burglary charge. Corum sought to negotiate resolution of both F5-146 and F4-64, and the State told Corum that it would seek to add a habitual offender enhancement in F4-64 if the matter could not be resolved by plea agreement. Corum relayed the State's plea offers to Glenn, and she discussed with Glenn the discovery materials she received in connection with the burglary charge. She also informed Glenn regarding his constitutional rights as a defendant and that he would be waiving some of these rights by pleading guilty. Corum believed Glenn understood what she was telling him because he gave detailed descriptions of the events that led to his charges. The trial court issued an order on December 22, 2020, denying Glenn's motion to withdraw his guilty plea:

The Court now finds that Defendant's plea of guilty was made freely and voluntarily and that he was under no mental condition or influence of any medication that would have affected his understanding of the proceedings. The Court further finds that the Defendant waived any initial hearing to which he may have been entitled to the charge of Burglary to which he pleaded guilty per the plea agreement and that he was properly advised during the plea hearing of the charge and of his rights as they related to the charge. Therefore, Defendant's Motion to Withdraw Guilty Plea is DENIED.

(App. Vol. II at 44.)

[9] The trial court then scheduled a sentencing hearing for February 9, 2021. Glenn filed a motion to reconsider the denial of his motion to withdraw his guilty plea, which the trial court denied on January 7, 2021. Undeterred, Glenn renewed his motion to withdraw his guilty plea and professed innocence at his sentencing hearing, but the trial court again denied the motion. The trial court then accepted the plea agreement and sentenced Glenn to a term of eight years in the Indiana Department of Correction.

Discussion and Decision

[10] Indiana Code section 35-35-1-4(b) allows a defendant to move to withdraw a guilty plea prior to the trial court's entry of sentence, and the trial court has discretion to grant the motion "for any fair and just reason unless the state has been substantially prejudiced by reliance upon the defendant's plea." However, the statute goes on to state that "the court shall allow the defendant to withdraw his plea of guilty, or guilty but mentally ill at the time of the crime, whenever the defendant proves that withdrawal of the plea is necessary to correct a manifest injustice." *Id.* "'Manifest injustice' and 'substantial prejudice' are necessarily imprecise standards, and an appellant seeking to overturn a trial court's decision faces a high hurdle." *Gross v. State*, 22 N.E.3d 863, 868 (Ind. Ct. App. 2014), *trans. denied*. We presume that a trial court's denial of a motion to withdraw a guilty plea is valid, and it is the burden of the appealing party to convince us that the trial court abused its discretion. *Asher v. State*, 128 N.E.3d 526, 530 (Ind. Ct. App. 2019). "In determining whether a trial court has abused

its discretion in denying a motion to withdraw a guilty plea, we examine the statements made by the defendant at the guilty plea hearing to decide whether the plea was offered ‘freely and knowingly.’” *Jeffries v. State*, 966 N.E.2d 773, 777 (Ind. Ct. App. 2012) (quoting *Brightman v. State*, 758 N.E.2d 41, 44 (Ind. 2001)), *trans. denied*.

- [11] Glenn initially observes that the State conceded it would not suffer substantial prejudice if the trial court allowed Glenn to withdraw his guilty plea. However, while a showing of substantial prejudice to the State limits the trial court’s discretion to grant a motion to withdraw a guilty plea, the trial court is not required to allow the withdrawal of a guilty plea in the absence of substantial prejudice to the State. *See Anthony v. State*, 348 N.E.2d 60, 63 (Ind. Ct. App. 1976) (“The State’s showing of substantial prejudice is a limitation upon the trial court’s discretion not a condition precedent to the exercise of that discretion.”). Thus, the State’s concession is not dispositive, and the trial court retained discretion to deny Glenn’s motion.

- [12] We must still determine whether withdrawal of Glenn’s guilty plea was necessary to correct a manifest injustice. Indiana Code section 35-35-1-4(c) lists a manifest injustice as occurring whenever:

- (1) the convicted person was denied the effective assistance of counsel;
- (2) the plea was not entered or ratified by the convicted person;
- (3) the plea was not knowingly and voluntarily made;

(4) the prosecuting attorney failed to abide by the terms of a plea agreement; or

(5) the plea and judgment of conviction are void or voidable for any other reason.

Glenn argues that his guilty plea was not knowingly made because he could not comprehend the proceedings when he entered his guilty plea due to side effects from Haldol, Zyprexa, and Lexapro. However, the trial court observed Glenn when he entered his guilty plea. Glenn did not mention Haldol or Zyprexa when the trial court asked him to list the medications he was taking for his bipolar disorder. While Glenn told the court that he was taking Lexapro, he confirmed that the medication did not interfere with his ability to understand and participate in the guilty plea hearing. He also told the court that he was thinking clearly and that his bipolar disorder did not interfere with his ability to understand the proceedings. Glenn was able to confirm the factual basis for the offense at the hearing, and Corum later testified that she did not have trouble discussing Glenn's case with him before he entered his plea. Therefore, the trial court was entitled to credit its own observations of Glenn at the plea hearing and Corum's testimony over Glenn's subsequent claims that he was intoxicated. *See Coomer v. State*, 652 N.E.2d 60, 62-63 (Ind. 1995) (holding trial court was entitled to credit defendant's direct answers to the court's questions during a change of plea hearing to find that defendant knowingly and voluntarily entered guilty plea).

[13] Likewise, the trial court was not required to credit Glenn's protestations of innocence after he admitted under oath during the October 21, 2020, hearing to burglarizing his ex-girlfriend's house. In *Carter v. State*, our Indiana Supreme Court held that the trial court was entitled to credit a defendant's detailed admission of committing the charged crime when entering a guilty plea over the defendant's later, general assertions of innocence. 749 N.E.2d 126, 131 (Ind. 2000). The Court explained:

An admission of guilt that is later retracted may nonetheless be reliable. Admissions of guilt and assertions of innocence come in many shades of gray, and the trial judge is best situated to assess the reliability of each. A credible admission of guilt, contradicted at a later date by a general and unpersuasive assertion of innocence, may well be adequate for entering a conviction.

Id. at 130 (internal citation omitted). Glenn attempts to distinguish his case from *Carter* by saying he "did not provide a 'detailed' admission of the charged offense." (Appellant's Br. at 14.) However, we disagree with this characterization of Glenn's admission. When Glenn pled guilty, he identified the victim of the burglary, the burglarized structure, the day the burglary occurred, and what he stole after breaking into the house. Whereas when he attempted to withdraw his guilty plea, he described himself as "one hundred percent innocent" without giving any further details. (Tr. Vol. II at 114.) Like

in *Carter*, the trial court was entitled to credit Glenn's detailed admission of the crime over his later, broad assertions of innocence.⁶

[14] Glenn additionally asserts that his constitutional right to represent himself was violated when Corum commenced acting as his counsel in F4-64. However, while the "services of an attorney appointed by the court may not be forced upon a pauper defendant," *Duncan v. State*, 412 N.E.2d 770, 773 (Ind. 1980), Glenn did not attempt to represent himself until after he entered his guilty plea. Even though Corum had not yet formally entered her appearance in F4-64, Glenn did not object to her representing him in both F4-64 and F5-146 at the October 21, 2020, hearing. He agreed with the trial court at that hearing that a public defender was representing him, and he expressed satisfaction with his counsel. Glenn also never asserted that he expressed to Corum a desire to represent himself in F4-64 during their meetings about the case before October 21, 2020. Corum negotiated on Glenn's behalf and substantially reduced the potential length of Glenn's aggregate sentence by convincing the State to dismiss some of the charges against him and refrain from seeking to enhance Glenn's sentence due to his habitual offender status. Consequently, we cannot say that Glenn's right to represent himself was infringed or that he received

⁶ Similarly, we are not persuaded by Glenn's argument that he would not have pled guilty had he known that one of his ex-girlfriend's neighbors could not identify him in a photo array. The State explained to the trial court that this evidence was disclosed to Glenn in discovery, and we see nothing in the record to indicate that this identification problem caused Glenn to plead guilty. *See Black v. State*, 54 N.E.3d 414, 428 (Ind. Ct. App. 2016) (holding petitioner was not entitled to post-conviction relief because he did not demonstrate that counsel's omission in advice was material to his decision to plead guilty), *trans. denied*.

ineffective assistance of counsel. *See Willoughby v. State*, 792 N.E.2d 560, 565 (Ind. Ct. App. 2003) (holding counsel was not ineffective in negotiating plea agreement), *trans. denied*.

Conclusion

- [15] The trial court did not abuse its discretion or cause a manifest injustice when it refused to allow Glenn to withdraw his guilty plea because Glenn's efforts to do so amount to nothing more than attempts to renege on a valid plea agreement. The record supports the trial court's finding that Glenn entered into the plea agreement knowingly and voluntarily. The trial court was not required to credit Glenn's claims of intoxication or his protestations of innocence when these assertions directly contradicted what Glenn said when he entered his guilty plea. Accordingly, we affirm the trial court.

- [16] Affirmed.

Kirsch, J., and Vaidik, J., concur.