MEMORANDUM DECISION

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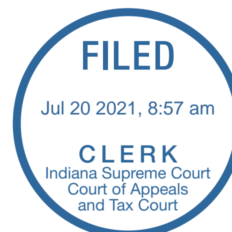

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IN THE

COURT OF APPEALS OF INDIANA

Phillip J. Slinn,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff,

July 20, 2021

Court of Appeals Case No. 21A-CR-108

Appeal from the Tippecanoe Superior Court

The Honorable Steven P. Meyer, Judge

Trial Court Cause No. 79D02-1802-F5-40

Robb, Judge.

Case Summary and Issue

[1] The State charged Phillip Slinn with two counts of intimidation as Level 5 felonies and criminal recklessness with a deadly weapon, a Level 6 felony. Slinn entered an agreement to plead guilty to criminal recklessness with a deadly weapon. In exchange, the intimidation charges were to be dismissed. The trial court accepted his guilty plea and sentenced him accordingly. Slinn now appeals raising one issue for our review: whether the trial court abused its discretion by accepting Slinn's guilty plea. Concluding that the trial court did not abuse its discretion, we affirm.

Facts and Procedural History

[2] On February 18, 2018, officers of the Lafayette Police Department received a dispatch regarding a man with a knife. When the officers arrived at the scene, they spoke to John Pope and Melissa Hamrick. Pope, Hamrick, and Slinn all lived in the same building. Slinn got into an argument with Pope and afterwards Slinn got a knife from his room. Slinn then proceeded to chase Hamrick and Pope to Hamrick's room. On February 22, the State charged Slinn with two counts of intimidation, both Level 5 felonies, and one count of criminal recklessness with a deadly weapon, a Level 6 felony.

[3] Slinn is diagnosed with bipolar disorder. On March 1, 2019, the trial court appointed Dr. Jonathon Mangold and Dr. Vernon Little to examine and evaluate Slinn for purposes of determining his competency to stand trial. Both

doctors concluded that Slinn was competent to stand trial. *See* Appendix of Appellant, Volume II at 108-13.

[4] On June 4, 2019, Slinn entered a plea agreement pleading guilty to criminal recklessness with a deadly weapon in exchange for dismissal of the remainder of his charges. *Id.* at 63-64. At the guilty plea hearing, Slinn answered in the affirmative when asked if he wished to "withdraw [his] earlier plea of not guilty and enter a plea of guilty pursuant to this Plea Agreement." Transcript, Volume 2 at 4. When asked how much of the proceeding he comprehended, Slinn stated, "I can't understand [the court] with . . . holy omniscience. I only understand like as a sinner." *Id.* at 5. Regarding his bipolar disorder, Slinn testified that he was under a doctor's care at Eskenazi Hospital in Indianapolis and that he had been prescribed medication. When asked whether he believed his disorder would interfere with his ability to understand the hearing, he answered, "I don't feel that it's affecting me significantly enough to where I wouldn't be able to submit to the Plea Agreement." *Id.* at 8. The trial court explained the rights Slinn was giving up by pleading guilty, and Slinn indicated he understood. The trial court found that Slinn's plea was freely and voluntarily made and issued an order taking Slinn's plea "under advisement" until the sentencing hearing. Appellant's App., Vol. II at 61-62.

[5] On July 16, 2019, Slinn moved to continue his sentencing hearing and filed a motion requesting a competency evaluation be completed because Slinn had demonstrated behavior raising concerns about his competency. *See id.* at 54, 56-57. The trial court continued the sentencing hearing and appointed Dr. Sean

Samuels and Dr. Little to evaluate Slinn's competency.[1] *See id.* at 50, 52-53. Dr. Little again concluded that Slinn was competent to stand trial. However, Dr. Samuels concluded that Slinn was not competent, stating Slinn was "unlikely to be able to understand the proceedings against him and is currently unable to assist in the preparation of his defense[.]" *Id.* at 107.

[6] On January 10, 2020, the trial court held a competency hearing and took the matter under advisement. Subsequently, Slinn moved for permission to have a third medical professional evaluate him. The court granted the motion and assigned Dr. Jeffrey Wendt to complete a competency evaluation. Dr. Wendt concluded that Slinn was "currently incompetent to stand trial. However, . . . there is a substantial probability that he could be expected to regain competency . . . if he is provided with appropriate psychotropic medication and a structured therapeutic environment." *Id.* at 99.

[7] On August 7, 2020, the trial court issued an order finding that Slinn lacked the competency to stand trial and ordered him committed to the Indiana Department of Mental Health to be confined in an appropriate psychiatric institution. *See id.* at 29-30. Slinn was then sent to the Indiana NeuroDiagnostic Institute and Advanced Treatment Center ("NDI") for restorative services. On November 18, 2020, Dr. Steven Conant, of NDI, concluded that after completing therapeutic groups/activities and legal education, Slinn was

[1] Dr. Mangold declined appointment for reevaluation of Slinn. *See* App. of Appellant, Vol. II at 50.

"competent to assist his attorney in regard to his present legal charge." *Id.* at 93-94. On January 11, 2021, the sentencing hearing was held.

[8] Slinn's counsel and the State had agreed to a sentence and the trial court indicated it would accept that agreed disposition. Slinn refused to state whether he agreed with the disposition and stated that he believed he was "railroaded" into his original plea agreement and that he was innocent. Tr., Vol. 2 at 31. Slinn continued, stating that he did not "want to go with this Plea Agreement" and wished to go to trial. *Id.* at 37. The trial court informed him that his guilty plea could not be retracted and that they were there for sentencing only. *See id.* at 32-34. The trial court sentenced Slinn to one year and 180 days in the Tippecanoe County Jail with one year suspended to probation.[2] Slinn now appeals.

Discussion and Decision

I. Standard of Review

[9] A trial court has discretion in deciding whether to accept a guilty plea, and we will reverse the trial court's decision only when it has abused that discretion. *Webster v. State*, 708 N.E.2d 610, 613 (Ind. Ct. App. 1999), *trans. denied.* A

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[2] Slinn was given credit for ninety days actually served plus an additional ninety days of credit time, so he was sentenced to no jail time. *See* Tr., Vol. 2 at 31.

reversal is appropriate only where the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. *Id.*

II. Guilty Plea

[10] Slinn argues that the trial court abused its discretion in accepting his plea of guilty at the sentencing hearing. Slinn concedes that he never formally moved to withdraw his guilty plea. However, Slinn also contends that the trial court abused its discretion in accepting his guilty plea "despite his protestations to the contrary." Brief of Appellant at 5. At the sentencing hearing Slinn stated, "I always feel like I'm being railroaded into this thing and I'm innocent. . . . I could prove my innocence . . . if we were to go to trial." Tr., Vol. 2 at 31-32. Such statements are merely oral attempts to withdraw his guilty plea.

[11] Under Indiana Code section 35-35-1-4(b), after the entry of a plea but before a sentence is imposed, a defendant may move to withdraw a plea of guilty "for any fair and just reason[.]" Trial courts are directed to allow defendants to withdraw their guilty pleas "whenever the defendant proves that withdrawal of the plea is necessary to correct a manifest injustice." Ind. Code § 35-35-1-4(b). Withdrawal of a guilty plea is appropriate whenever a plea is not knowingly or voluntarily made. *Jefferies v. State*, 966 N.E.2d 773, 778 (Ind. Ct. App. 2012), *trans. denied.* However, motions to withdraw guilty pleas "shall be in writing and verified" and "shall state facts in support of the relief demanded[.]" Ind. Code § 35-35-1-4(b). "A defendant's failure to submit a verified, written motion to withdraw a guilty plea generally results in waiver of the issue of wrongful

denial of the request." *Peel v. State*, 951 N.E.2d 269, 272 (Ind. Ct. App. 2011) (citation omitted). We conclude that Slinn's argument regarding the trial court's failure to allow him to withdraw his guilty plea despite his "protestations to the contrary" are waived by failure to tender a proper motion to the court. Br. of Appellant at 9.

[12] Slinn also argues that given his "unique circumstances," the trial court abused its discretion in accepting his plea. *Id.* at 7. By "unique circumstances," Slinn refers to the multitude of competency evaluations he was required to partake in and the trial court's August 7, 2020, order declaring he was not competent to "understand the nature of this criminal action against him and to make a defense thereto." App. of Appellant, Vol. II at 29-30; *see also* Br. of Appellant at 7-9.

[13] Because a guilty plea constitutes a waiver of constitutional rights, the defendant's decision to plead guilty must be knowing, voluntary, and intelligent. *Davis v. State*, 675 N.E.2d 1097, 1102 (Ind. 1996). But a defendant cannot knowingly and voluntarily waive his constitutional rights if he is not sufficiently competent to do so. *See Suldon v. State*, 580 N.E.2d 718, 720 (Ind. Ct. App. 1991), *trans. denied*. A defendant is not competent when he is unable to understand the proceedings and assist in the preparation of his defense. *Barber v. State*, 141 N.E.3d 35, 44 (Ind. Ct. App. 2020), *trans. denied.*; *see also* Ind. Code § 35-36-3-1(a). The conviction of an incompetent defendant is a denial of due process. *Faris v. State*, 901 N.E.2d 1123, 1125 (Ind. Ct. App. 2009), *trans. denied*.

[14] To prove a substantive competency claim, the petitioner must present clear and convincing evidence "creating a real, substantial, and legitimate doubt as to his competence[.]" *Barber*, 141 N.E.3d at 44 (quotation omitted). Here, the trial court took Slinn's guilty plea under advisement until the sentencing hearing, but before the sentencing hearing could be held, declared him incompetent. However, it is Slinn's competence at the guilty plea hearing, when he entered his guilty plea, which we must determine. *See* Ind. Code 35-35-1-3(a) ("The court shall not accept a plea of guilty . . . without first determining that the plea is voluntary."); *see also Barber*, 141 N.E.3d at 45 (concluding defendant was "competent to knowingly and voluntarily *enter* a guilty plea") (emphasis added).

[15] Prior to Slinn's guilty plea hearing, the trial court appointed Dr. Mangold and Dr. Little to examine and evaluate Slinn for purposes of determining his competency to stand trial. Both doctors concluded that Slinn was competent to stand trial. *See* App. of Appellant, Vol. II at 108-13. Further, at the guilty plea hearing, when Slinn was asked whether he believed his bipolar disorder would interfere with his ability to understand the hearing, he answered that he did not "feel it's affecting [him] significantly enough to where [he] wouldn't be able to submit to the Plea Agreement." Tr., Vol. 2 at 8. Slinn also indicated he understood all the rights he was giving up by choosing to plead guilty. The record is clear that at the time of the guilty plea hearing, there was nothing to indicate that Slinn was incompetent, and therefore trial court did not abuse its discretion in accepting the guilty plea.

Conclusion

[16] We conclude that the trial court did not abuse its discretion when it accepted Slinn's guilty plea. Accordingly, we affirm.

[17] Affirmed.

Bailey, J., and May, J., concur.