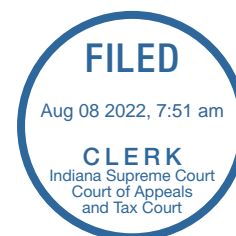


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Christopher R. Salter,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 8, 2022

Court of Appeals Case No.
22A-CR-226

Appeal from the Perry Circuit
Court

The Honorable M. Lucy Goffinet,
Judge

Trial Court Cause No.
62C01-2012-F2-694

Altice, Judge.

Case Summary

- [1] Pursuant to a plea agreement, Christopher R. Salter pleaded guilty to Level 2 felony dealing in methamphetamine. The sentencing hearing was continued several times at Salter's request. When the sentencing hearing eventually convened four months after the guilty plea hearing, Salter sought another continuance, which was denied. Salter then asked to withdraw his guilty plea. The trial court denied this request and sentenced him pursuant to the plea agreement. On appeal, Salter contends that the trial court abused its discretion by denying the motion to withdraw his guilty plea.
- [2] We affirm.

Facts & Procedural History

- [3] On December 9, 2020, the State charged Salter with Level 2 felony dealing in methamphetamine, Level 4 felony possession of methamphetamine, Level 5 felony carrying a handgun without a license, Level 6 felony possession of a controlled substance, Class B misdemeanor possession of marijuana, and Class C misdemeanor possession of paraphernalia. The State later filed a notice of intent to seek habitual offender status.
- [4] On September 8, 2021, Salter entered into a plea agreement with the State, pursuant to which he would plead guilty to Level 2 felony dealing in methamphetamine and the State would dismiss the remaining counts. The agreement also provided for a fixed sentence of seventeen years in the Indiana Department of Correction.

- [5] The trial court held a hearing that same day,¹ where the court advised Salter of his constitutional rights, found a factual basis for the plea, and determined that the plea was being entered into knowingly, voluntarily, and intelligently. The court then entered a judgment of conviction, ordered a pre-sentencing report, and set the matter for sentencing on October 13, 2021.
- [6] Thereafter, the sentencing hearing was continued to November 10 on Salter's motion, as counsel had a family emergency. The hearing was again continued to December 8 on Salter's motion, which alleged that defense counsel "was recently made aware of an additional fact needing investigation." *Appendix* at 120. Salter obtained another continuance to December 15. When he appeared that day for sentencing, Salter requested a fourth continuance because he had "some additional questions" and wanted to speak in person with defense counsel at the jail. *Supplemental Transcript* at 4. The trial court granted a continuance until January 12, 2022.
- [7] At the beginning of the January 12 sentencing hearing, Salter asked for another continuance. His counsel explained:

Mr. Salter has several questions and wants to meet with me privately at the jail in person. And if the Court isn't aware, the jail is not allowing for in-person visitation at this time. I did work with the jail commander to get an exception to that rule to be allowed to go in and speak with Mr. Salter privately, but then

¹ Due to the COVID-19 pandemic, each of the hearings in this case were held by video conference, with Salter appearing by video from jail and defense counsel appearing by telephone.

I had the issue with my son and did not want to risk bringing anything into the jail and had to reschedule that meeting.

So if the Court would allow, I'd ask to reset [to] February [so] that hopefully, once I get a negative test here, I can go in and meet with Mr. Salter before sentencing. But he had questions and wanted to meet with me personally.

Transcript at 43. Noting that this would be the fifth continuance, the trial court responded: “Absolutely not.” *Id.* Salter then requested permission to withdraw his guilty plea, and the State objected. The trial court denied Salter’s request and then imposed the seventeen-year sentence as set out in the plea agreement. Salter now appeals, arguing that the trial court abused its discretion by denying the motion to withdraw the plea.

Discussion and Decision

[8] After a guilty plea is entered, but before a sentence is imposed, a defendant may move to withdraw his guilty plea “for any fair and just reason” unless the State has been substantially prejudiced by its reliance on the plea. Ind. Code § 35-35-1-4(b); *see also Brightman v. State*, 758 N.E.2d 41, 44 (Ind. 2001). The motion “shall be in writing and verified” and “shall state facts in support of the relief demanded.” I.C. § 35-35-1-4(b). Further, the trial court “must allow a defendant to withdraw a guilty plea if “necessary to correct a manifest injustice.” *Brightman*, 758 N.E.2d at 44 (quoting I.C. § 35-35-1-4(b)).

[9] A trial court’s ruling on a motion to withdraw a guilty plea arrives on appeal with a presumption in favor of the ruling, and we will reverse only for an abuse

of discretion. *Id.* “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 his guilty plea hearing to decide whether his plea was offered ‘freely and knowingly.’” *Id.*

[10] Salter, as the moving party, bore the burden of establishing his grounds for relief by a preponderance of the evidence. *See* I.C. § 35-35-1-4(e). The only basis offered in support of his request was that he had “several questions” and wanted to meet with counsel privately in person at the jail before sentencing, which he had been unable to do due to restrictions related to the pandemic.² *Transcript* at 43. Salter did not assert, or even imply, at any point that his plea was not knowingly or voluntarily made.

[11] Contrary to his assertions on appeal, Salter entirely failed to demonstrate that the withdrawal of his plea was necessary to correct a manifest injustice. Moreover, Salter’s motion to withdraw was not made in writing and verified, as required by I.C. § 35-35-1-4(b). Under these circumstances, we conclude that the trial court did not abuse its discretion when it denied Salter’s motion to withdraw his guilty plea. *See Kinman v. State*, 149 N.E.3d 619, 627 (Ind. Ct. App.), *aff’d in relevant part*, 152 N.E.3d 1060, 1060 (Ind. 2020) (“summarily affirm[ing] the portion of the Court of Appeals opinion finding that Kinman’s oral motion to withdraw his guilty plea was procedurally defective, so the trial

² Salter did not allege that he was unable to consult with counsel remotely as opposed to in person.

court did not abuse its discretion in denying it”); *Bland v. State*, 708 N.E.2d 880, 882 (Ind. Ct. App. 1999) (denial of pre-sentence motion to withdraw guilty plea affirmed where defendant did not file a written and verified motion and had not established that denial of his motion to withdraw his guilty plea would result in manifest injustice).

[12] Judgment affirmed.

Vaidik, J. and Crone, J., concur.