

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Daniel L. Fisher,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 6, 2022

Court of Appeals Case No.
22A-CR-494

Appeal from the Delaware Circuit
Court

The Honorable Kimberly S.
Dowling, Judge

Trial Court Cause No.
18C02-1802-F2-2

Altice, Judge.

Case Summary

- [1] Daniel L. Fisher appeals the trial court's denial of his motion to withdraw his guilty plea to dealing in methamphetamine as a Level 2 felony and to being a habitual offender.
- [2] We affirm.

Facts & Procedural History

- [3] On February 6, 2018, Muncie Police Department officers executed a search warrant at a home where Fisher was residing and discovered, among other things, 453 grams of methamphetamine. That same day, the State charged Fisher with Level 2 felony dealing in methamphetamine, Level 2 felony dealing in a narcotic, Level 4 felony unlawful possession of a firearm by a serious violent felon, Level 6 felony maintaining a common nuisance, Level 6 felony neglect of a dependent, Class A misdemeanor possession of marijuana, and Class C misdemeanor possession of paraphernalia. The State also alleged that he was a habitual offender. About a week later, the State added two counts of Level 4 felony dealing in a narcotic drug.
- [4] Over the next two years, the parties prepared for trial. Among other things, Fisher filed motions to suppress, which were denied. Eventually, a jury trial was set for October 4, 2021. On September 13, 2021, at what was scheduled as a final pretrial hearing, the parties indicated they had reached an agreement and presented a written plea agreement to the court. The plea agreement provided that Fisher would plead guilty to dealing in methamphetamine as a Level 2

felony and to being a habitual offender in exchange for the State’s dismissal of the remaining charges. The agreement capped Fisher’s sentence on the Level 2 felony at fifteen years executed and left sentencing on the habitual enhancement to the discretion of the trial court. The court recessed briefly to allow the parties “to get that paperwork done” and then resumed to conduct a change of plea hearing. *Transcript* at 5.

[5] At the hearing, Fisher indicated his desire to withdraw his earlier plea of not guilty and to plead guilty. The trial court reviewed Fisher’s rights, and Fisher indicated he understood those rights and that he was waiving those rights by pleading guilty. Fisher affirmed his understanding that he was agreeing to plead guilty to Level 2 felony dealing in methamphetamine and admitting to the habitual offender allegation. Fisher testified that he did not suffer from any mental illness or emotional disability and was not under the influence of alcohol or drugs. He denied receiving any promises or benefits outside of the plea agreement and confirmed that he was not forced, threatened, or otherwise put in fear to plead guilty. Fisher affirmed that he was pleading guilty based on his “own free choice and ... decision.” *Id.* at 9-10. Fisher answered “[y]es” when asked if he had reviewed the plea agreement and if his counsel had explained everything to him. *Id.* at 10. Fisher affirmed that it was “still his intention to plead guilty.” *Id.*

[6] To establish a factual basis, Fisher admitted that on February 6, 2018, when police executed the search warrant, he was in possession of 453 grams of methamphetamine. He also admitted that he has three prior, unrelated

convictions for dealing in cocaine. Fisher thereafter responded “guilty” when asked how he was pleading to the dealing offense and admitted to being a habitual offender. *Id.* at 12. The court determined there was a factual basis for the plea, that Fisher’s “offer to plead guilty is freely and voluntarily made,” and it took the plea agreement under advisement until sentencing, which was set for November 8, 2021. *Id.*

- [7] On November 2, 2021, Fisher, who was represented by counsel, filed a pro se motion to withdraw the plea agreement, claiming “defendant[']s counsel[']s unwillingness to prepare for trial against defendant[']s request creates a great ‘injustice’ and stagnates the opportunity to preserve rights for appeal.” *Appellant’s Appendix Vol. III* at 47. Fisher also filed a pro se motion to withdraw his counsel claiming that he “feels coerce[d] into making a decision not in his best interest” and that “proceeding in that matter will cause a great injustice.” *Id.* at 45-46. The next day, Fisher’s attorney filed a motion to withdraw, indicating that Fisher had advised her that he desired to withdraw his guilty plea, that she “will not be representing [Fisher] at a trial,” and that she “has ethical and moral concerns that cannot be disclosed due to client confidentiality.” *Id.* at 86.

- [8] The same day, the State filed a motion to strike Fisher’s pro se motion to withdraw his guilty plea pursuant Ind. Trial Rule 11, which required Fisher’s attorney to have signed the pleading. The State also filed an objection to Fisher’s pro se motion to withdraw his plea, arguing that his motion was not a verified motion, as required by statute, that it failed to state specific facts in

support – alleging only his counsel’s “unwillingness to prepare for trial” created an “injustice” – and further did not allege that his plea was in some way not free, knowing, and voluntary. *Id.* at 92.

[9] The parties appeared for the November 8, 2021 hearing, which was originally set as a plea acceptance and sentencing hearing. After acknowledging the various recent filings, the court held a hearing on Fisher’s counsel’s motion to withdraw. The court granted Fisher’s counsel’s request, took the other pending motions under advisement, and set them for hearing on January 6, 2022. A new public defender appeared for Fisher on November 16, 2021.

[10] Following a continuance, the hearing on the pending motions was held on February 7, 2022. In explaining why he desired to withdraw his guilty plea, Fisher testified that “initially” his intention was to go to trial but his then-attorney told him that she did not recommend trial “because of certain reasons.” *Transcript* at 28. Fisher testified that he did not agree with his attorney and “still felt like trial would be best,” but because his counsel indicated she was going to withdraw if he wanted to proceed with trial, he “just kind of felt pressured into going with the plea bargain.” *Id.* He further told the court that, when he came to court on September 13, he “didn’t know that [he] was coming here to discuss a plea agreement,” “didn’t have a chance to discuss it” with family or others, felt “boxed in” and “coerced,” and “just felt like [he] made a horrible decision.” *Id.* at 28, 30. The court then asked Fisher questions concerning the September 13 guilty plea hearing, and Fisher agreed that at no

point did he express to the court that he was being forced to plead guilty or that he wanted time to talk to his family.

[11] The trial court denied the State’s motion to strike, denied Fisher’s pro se motion to withdraw the plea agreement, and accepted the plea agreement. The court sentenced Fisher to fifteen years for dealing in methamphetamine as a Level 2 felony with a ten-year habitual offender enhancement. The trial court dismissed the remaining charges. Fisher now appeals.

Discussion & Decision

[12] Fisher contends that the trial court abused its discretion when it denied his motion to withdraw his guilty plea. Ind. Code § 35-35-1-4(b) provides that after a guilty plea is entered, but before a sentence is imposed, a defendant may move to withdraw his guilty plea. The motion “shall be in writing and verified” and “shall state facts in support of the relief demanded,” and the defendant bears the burden of establishing grounds for relief by a preponderance of the evidence. I.C. §§ 35-35-1-4(b), (e). The trial court “may allow” the defendant to withdraw his plea “for any fair and just reason” unless the State has been substantially prejudiced by its reliance on the plea. I.C. § 35-35-1-4(b). The trial court “shall allow” a defendant to withdraw a guilty plea if the defendant “proves that withdrawal of the plea is necessary to correct a manifest injustice.” *Id.*; *see also McGraw v. State*, 938 N.E.2d 1218, 1220 (Ind. Ct. App. 2010), *trans. denied*.

[13] The terms “manifest injustice” and “substantial prejudice” are necessarily imprecise standards. *Gross v. State*, 22 N.E.3d 863, 868 (Ind. Ct. App. 2014),

trans. denied. However, we have held that instances of manifest injustice may include: a defendant is denied the effective assistance of counsel, the plea was not entered or ratified by the defendant, the plea was not knowingly and voluntarily made, the prosecutor failed to abide by the terms of the plea agreement, or the plea and judgment of conviction are void or voidable. *Jeffries v. State*, 966 N.E.2d 773, 778 (Ind. Ct. App. 2012), *trans. denied*; *see also* I.C. § 35-35-1-4(c) (listing situations of manifest injustice).

[14] A defendant seeking to overturn a trial court’s denial of a motion to withdraw a guilty plea “faces a high hurdle.” *Gross*, 22 N.E.3d at 868. The trial court’s ruling is presumptively valid, and a defendant appealing an adverse decision must prove the court has abused its discretion. *Asher v. State*, 128 N.E.3d 526, 530 (Ind. Ct. App. 2019); *see also Brightman v. State*, 758 N.E.2d 41, 44 (Ind. 2001). “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.’” *Brightman*, 758 N.E.2d at 44; *Peel v. State*, 951 N.E.2d 269, 271 (Ind. Ct. App. 2011).

[15] Fisher maintains that withdrawal of his plea was necessary to correct a manifest injustice and that he provided a fair and just reason for its withdrawal. Both arguments are grounded in his claim that he “felt coerced by his attorney” into taking a plea “that he did not want” because he “desired to take his case to trial” but his attorney would not do so. *Appellant’s Brief* at 14, 18.

[16] To the extent that Fisher’s claim is that his plea was not knowing or voluntary, the record does not support it. That is, at the guilty plea hearing, Fisher clearly and repeatedly stated his desire to plead guilty and he admitted the underlying facts of the dealing charge and to being a habitual offender. He does not suggest that he misunderstood the plea or that he was misled. He indicated that he had reviewed and discussed the agreement with his counsel. That Fisher later changed his mind – or, as the State puts it, experienced “buyer’s remorse” – does not establish that his plea was not knowing and voluntary. *Appellee’s Brief* at 13.

[17] Fisher has failed to establish that the withdrawal of his plea was necessary to correct a manifest injustice. And he has not overcome the court’s presumptively valid decision to deny his motion. Accordingly, we find no abuse of discretion. *See Coomer v. State*, 652 N.E.2d 60, 63 (Ind. 1995) (no abuse of discretion in denying defendant’s motion to withdraw his guilty plea where defendant’s answers to the trial court’s questions before entering the plea demonstrated it was knowing and voluntary).

[18] Judgment affirmed.

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