

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Christopher M. Chism,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 24, 2023

Court of Appeals Case No.
22A-CR-2750

Appeal from the
Washington Circuit Court

The Honorable
Larry W. Medlock, Judge

Trial Court Cause No.
88C01-2207-F5-584

Memorandum Decision by Judge Foley
Judges Vaidik and Tavitas concur.

Foley, Judge.

[1] After an argument with his grandmother escalated into a physical confrontation with his brother, Christopher M. Chism (“Chism”) was charged with felony intimidation¹ and misdemeanor domestic battery.² He entered a guilty plea but later changed his mind and sought to withdraw the plea. After a hearing, the trial court denied the motion. Chism has failed to meet his burden of demonstrating that the denial of his motion works a manifest injustice. Thus, we affirm.

Facts and Procedural History³

[2] Chism was in his kitchen cutting potatoes when he got into an argument with his grandmother over the quantity of toilet paper in the home. Chism’s brother—apparently irritated with Chism’s tone toward their grandmother—got involved, and the disagreement escalated. Threats were exchanged. Chism retrieved a shovel to use as a weapon; Chism’s brother selected a machete as his weapon. Chism then used pepper spray, and an unarmed fracas ensued.

¹ Ind. Code § 35-45-2-1(b)(2), charged as a Level 5 felony.

² I.C. § 35-42-2-1.3, charged as a Class A misdemeanor.

³ Given the fact that this case was resolved without any factfinding, we draw this information from the probable cause affidavit. Technically speaking, that affidavit is not part of the evidentiary record. Nevertheless, as the State correctly observes, we have in the past held that when a probable cause affidavit is attached to the pre-sentence investigation report, and the defendant affirms that the report is accurate, she essentially admits to the facts in the probable cause documentation. *See, e.g. Slade v. State*, 942 N.E.2d 115, 117 (Ind. Ct. App. 2011). We prefer to rely on facts as adduced at trial or during a hearing, but here Chism’s testimony forming the factual basis for his plea was devoid of detail: he merely admitted to the material elements of the crimes charged.

[3] Police were called to the scene, and the following day—July 20, 2022—the State charged Chism with intimidation as a Level 5 felony; and domestic battery as a Class A misdemeanor. On September 1, 2022, Chism entered a guilty plea via signed agreement, and the trial court accepted the plea. Chism affirmed that he was freely and voluntarily entering into the agreement and that he had not been coerced or otherwise unduly influenced to do so. Twelve days later, however, Chism had a change of heart. He sought to withdraw his plea because he claimed that his attorney had promised that Chism’s brother (who was also arrested after the confrontation) would be released from jail if Chism pleaded guilty. The trial court held two hearings on Chism’s motion.

[4] On November 1, 2022, the trial court issued an order denying the motion to withdraw the plea. The order contained the following:

Mr. Chism had independent counsel, indicated on record he had committed the act, that he was not coerced or forced to sign the agreement, was happy with the results and with his attorney, and was aware of the circumstances of which he was signing. Additionally, the State would be prejudice [sic] by allowing Mr. Chism to withdraw the plea under the circumstances. That if he is unhappy with the attorney that represented him, he has other remedies other than asking that the plea be withdrawn.

Chism now appeals.

Discussion and Decision

[5] Chism essentially makes three arguments respecting the validity of the plea. First, he contends that the trial court did not properly account for Chism’s

“mental disability.”⁴ Appellant’s Br. p. 11. Second, he asserts that the State’s plea offer was “coercive” in nature, and that, therefore, the plea was not voluntary. *Id.* at 12. And finally, Chism argues that the trial court did not advise him of the possibility that he might raise an affirmative defense, thereby invalidating the plea. All three of these arguments fail.

[6] Indiana Code Section 35-35-1-4 provides that a party may request to withdraw a guilty plea. “The trial court is required to grant such a request only if the defendant proves that withdrawal of the plea ‘is necessary to correct a manifest injustice.’” *Asher v. State*, 128 N.E.3d 526, 530 (Ind. Ct. App. 2019) (quoting *Coomer v. State*, 652 N.E.2d 60, 61–62 (Ind. 1995)); *see also* Ind. Code § 35-35-1-4(c). “Rulings on motions to withdraw guilty pleas are presumptively valid, and parties appealing an adverse decision must prove the court has abused its discretion.” *Id.* (citing *Davis v. State*, 770 N.E.2d 319, 326 (Ind. 2002)). When evaluating Chism’s arguments on this point, “we will not disturb the ruling where it was based on conflicting evidence.” *Id.* (quoting *Weatherford v. State*, 697 N.E.2d 32, 34 (Ind. 1998)).

[7] Chism’s arguments are tantamount to a claim that his plea “was not knowingly and voluntarily made.” *See* I.C. § 35-35-1-4(c)(3). That suggestion is belied by the record. Under oath, Chism expressly disavowed having any mental illness or emotional disability. Evidence to the contrary does not factor into our

⁴ The pre-sentence investigation revealed that Chism suffered a traumatic brain injury as a child which has lingering effects.

analysis. He testified that he was not offered anything to accept the plea agreement, and he was not threatened, coerced, or otherwise forced to sign it. And he points to no requirement that he be advised of the existence of a theory of self-defense, though we note that the record suggests that he was initially contemplating asserting that defense, meaning the absence of the advisement is immaterial. We will not disturb a trial court's denial of a motion to withdraw a guilty plea absent a manifest injustice, and buyer's remorse does not a manifest injustice make. The record shows that Chism entered his plea with clear eyes and a full understanding of the consequences.

[8] Chism makes one last argument, which is that the trial court may grant a defendant's motion to withdraw a guilty plea "unless the state has been substantially prejudiced by reliance upon the defendant's plea[,]" I.C. § 35-35-1-4(b), and the State made no showing of prejudice. First, the language of the statute is permissive. A trial court *may* grant a withdrawal partially upon the basis that the State has not been substantially prejudiced by reliance on the plea. And second, this does not impose a burden upon the State to demonstrate prejudice. It may seek to do so as a means of opposing a motion to withdraw a plea, but it may oppose the motion on other grounds as well. By statute, the burden was on Chism, and he did not meet it.

[9] Affirmed.

Vaidik, J., and Tavitas, J., concur.