MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Qwanya S. Robinson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 27, 2021

Court of Appeals Case No. 20A-CR-2185

Appeal from the Lake County Superior Court

The Honorable Jamise Y. Perkins, Judge Pro Tempore

Trial Court Cause No. 45G02-1811-F1-38

Brown, Judge.

[1] Qwanya S. Robinson appeals the denial of his motion to withdraw his guilty plea for child molesting as a level 4 felony. We affirm.

Facts and Procedural History

[2] On November 14, 2018, the State charged Robinson with Count I, child molesting as a level 1 felony; Count II, child molesting as a level 4 felony; and Count III, incest as a level 4 felony.

[3] On September 17, 2020, Robinson and the State filed a Stipulated Plea and Agreement in which Robinson agreed to plead guilty to Count II, child molesting as a level 4 felony, and the parties agreed that he would be sentenced to twelve years in the Department of Correction with no opportunity for alternative placement. The Stipulated Plea and Agreement incorporated a Stipulated Factual Basis, which states that on November 12, 2018, Robinson was with his daughter, M.R., at their home in Lake County, Indiana, M.R. was five years old, Robinson used his erect penis to fondle M.R.'s vagina for his own sexual pleasures and desires, and Robinson did perform or submit to any fondling or touching of M.R., a child under the age of fourteen years with the intent to arouse or satisfy the sexual desires of either himself or M.R., contrary to Ind. Code § 35-42-4-3.

[4] That same day, the court held a hearing at which Robinson indicated he understood that the court would be bound by the terms of the plea agreement if accepted. Robinson stated that he was thirty-seven years old and, when asked how far he had "gone in school," he answered "11th." Transcript Volume II at

8. He indicated he understood the English language, was not under the influence of alcohol or drugs, and that he was satisfied with his counsel's representation of him. He stated that he had read all three pages of the Stipulated Plea and Agreement and understood its terms. The court reviewed the terms of the agreement and the sentencing ranges for the offenses. Robinson acknowledged he had read and signed the Stipulated Factual Basis and that he committed those acts described therein. The court informed Robinson of the rights he was waiving by pleading guilty.

[5] The following exchange then occurred between the court and Robinson:

> Q. Mr. Robinson, how do you plead to Count II, Child Molesting a level 4 felony?
>
> A. Guilty.
>
> Q. Sir, did anyone force you to plead guilty this morning?
>
> A. No.
>
> Q. Did anyone threaten you in anyway to get you to plead guilty?
>
> A. No.
>
> Q. Did anyone make any promises to you, other than the promises contained in this agreement, that you and I have just gone over in order to get you to plead guilty?
>
> A. No.
>
> Q. Finally, sir, are you pleading guilty to this offense because you are, in fact, guilty?
>
> A. Yes.

Id. at 13. The court asked defense counsel if there was any advantage to Robinson proceeding to trial, and he answered: "No, Your Honor." *Id.* at 14. The court found that Robinson understood the nature of the charges against him and the possible penalties, that his guilty plea was voluntarily entered, and that there was an adequate factual basis for the plea. The court took the plea of guilty under advisement and scheduled a sentencing hearing for October 28th.

[6] On October 28, 2020, Robinson filed a Motion to Withdraw Guilty Plea. The motion asserted: "1. On September 17, 2020 the defendant plead guilty. 2. The defendant has recently notified his attorney that he wishes to withdraw his plea of guilty and proceed to trial by jury." Appellant's Appendix Volume II at 65.

[7] That same day, the court held a sentencing hearing. At the beginning of the hearing, defense counsel stated that his office was contacted about a week and a half earlier regarding Robinson's desire to withdraw his guilty plea and that he was supposed to meet with Robinson, but Robinson had car issues and was unable to meet. Defense counsel stated he spoke with Robinson over the telephone and Robinson reiterated that he wanted to withdraw his guilty plea. The prosecutor stated that the motion did not comply with the requirements of Ind. Code § 35-35-1-4 because it was not verified and did not state facts in support of the relief demanded. She also asserted Robinson's guilty plea was voluntarily and knowingly entered. Defense counsel asked that the motion be amended to a verified motion.

[8] Robinson stated: "[W]hen we was in court, and I had to sign that plea, and I went home and – well before, when [my defense counsel] was talking to me about, um, the evidence, about, uh, DNA, saying there was a 99% match of me, and I had got my discovery yesterday . . . ." Transcript Volume II at 27. He also stated that the discovery indicated there was no semen and "[i]t had me thinking why – I know I'm innocent," and he "was just scared at the time." *Id.* He asserted: "I was thinking about 50 years versus 12 years knowing I shouldn't have took it and went ahead and went to trial." *Id.* at 27-28. He asserted that he contacted his defense counsel's office on October 5th to recant his plea and spoke with the secretary and called back later to speak with the supervisor to see if he "could get a different public defender because [he] wanted someone in [his] best interest to . . . help [him] out." *Id.* at 28. He stated that he was not informed that he could not see his child and that he "was under the assumption that we had a protective order, and [he] could not see [his] child at all." *Id.*

[9] The court indicated that it was confused, and Robinson stated: "It was a protective order, but I was told that I could still – after I talked with an attorney, a district attorney for Gary, he told me that I was able to see my child." *Id.* The court stated the protective order had no bearing on the guilty plea or his request to withdraw the guilty plea.

[10] Upon questioning by the court, Robinson indicated he received his discovery the previous day, that he had been told by his attorney that "it was 99% match for" him, and that two swabs were present and no semen was detected. *Id.* at 29. He asserted that he was told his DNA was found on M.R., that he knew

there was no DNA because he did not do anything to his daughter, and that "they was saying well they're going to find it anyway or they're going to get a DNA analysis person [to] come in and argue the fact that they did . . . ." *Id.* at 30. He stated that he signed the plea because, if he did not, he was going to face fifty years. He stated: "I don't want to be called a child molester knowing I didn't do that to my daughter." *Id.* He also asserted: "It's like I felt pressured into just signing the plea. That's why I signed it." *Id.*

[11] Defense counsel stated:

> He asked that he get discovery. That's the second time. It's not like he received this discovery just for the very first time yesterday. And then, additionally, Your Honor, uh, we met. Mr. Robinson, actually, did come to the Public Defender's Office. I had my file. We talked. There were two plea offers. One with an agreed sentence. The other with a cap.
>
> So I was able to talk to Mr. Robinson the day before the plea, as well as, to discuss the evidence of the case, Your Honor. I just wanted to make certain that was on the record.

Id. at 31.

[12] Robinson stated that the proceedings had been going on for two years, he did not know why it was taking so long, and, for that reason, he felt pressure. The prosecutor stated that, even if the court was granting the motion to amend to a verified motion, the statute required the reasons to be in writing. She asserted that Robinson could have hired another attorney since October 5th or prepared something on his own and that he grossly misunderstood the lab results. She

also asserted that Robinson cooperated with probation during the presentence investigation which were not the actions of someone proclaiming his innocence.

[13] For the sake of argument and in the interest of time, the court asked the prosecutor for her response if the court were to permit Robinson to amend his motion and add assertions. The prosecutor asserted that this simply appeared to be buyer's remorse because Robinson was scared of being called a child molester, wanted to be able to see the victim, and did not want to go to prison.

[14] The probation officer stated that Robinson was interviewed for the presentence investigation report on September 17th and that Robinson did not indicate that he was innocent.

[15] The court denied Robinson's motion to withdraw his guilty plea and stated that it went through painstaking steps to make sure he fully understood what he was doing. The court noted that at the time Robinson entered the plea agreement, a jury trial was scheduled for October 13, 2020, and that Robinson was fully aware that the jury trial was going to be vacated. The court acknowledged that Robinson failed to comport with the technical requirements of the statute but stated that its decision was not based on the violations.

[16] M.R.'s mother testified regarding the impact of the offense on M.R. Rabia Brown, Robinson's girlfriend, testified that she met Robinson a couple months earlier and that he pled guilty under duress. The prosecutor argued that M.R.'s mother walked in on Robinson naked with an erect penis with their daughter

next to him and this case is "much more than just some DNA evidence." *Id.* at 49. Defense counsel stated that he provided Robinson discovery, met with him in person the day before the change of plea, and went over the change of plea with him. He also stated that there was potential exposure to "a lot more jail time" and that he hoped the court accepted the agreement and sentence. *Id.* at 51. Robinson stated:

> I wish I never had to go through this. I miss my daughter. I know what type of person I am, and I'm not what she's claiming me to be. I hate everybody have [sic] to go through this. At this point, there's nothing I can do about it. I'm placing my life in ya'll hands.

Id.

[17] The court found Robinson's comments disingenuous and selfish and stated that it did not think "for one minute here that you did not understand." *Id.* at 52. It stated that defense counsel had been practicing law for over twenty years and did a phenomenal job negotiating the agreement. The court accepted the plea agreement, entered judgment of conviction for Count II, child molesting as a level 4 felony, dismissed Counts I and III pursuant to the plea agreement, and sentenced Robinson to twelve years in the Department of Correction.

Discussion

[18] The issue is whether the trial court abused its discretion in denying Robinson's request to withdraw his guilty plea. Both parties cite Ind. Code § 35-35-1-4(b),

which governs motions to withdraw guilty pleas filed after a defendant has pled guilty but before the trial court has imposed a sentence. It provides:

> After entry of a plea of guilty, or guilty but mentally ill at the time of the crime, but before imposition of sentence, the court may allow the defendant by motion to withdraw his plea of guilty, or guilty but mentally ill at the time of the crime, for any fair and just reason unless the state has been substantially prejudiced by reliance upon the defendant's plea. The motion to withdraw the plea of guilty or guilty but mentally ill at the time of the crime made under this subsection shall be in writing and verified. The motion shall state facts in support of the relief demanded, and the state may file counter-affidavits in opposition to the motion. The ruling of the court on the motion shall be reviewable on appeal only for an abuse of discretion. However, 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.

Ind. Code § 35-35-1-4(b).

[19] A defendant has the burden to prove by a preponderance of the evidence and with specific facts that he should be permitted to withdraw his plea. Ind. Code § 35-35-1-4(e); *Smith v. State*, 596 N.E.2d 257, 259 (Ind. Ct. App. 1992).

[20] "Manifest injustice" and "substantial prejudice" are necessarily imprecise standards, and an appellant seeking to overturn a trial court's decision faces a high hurdle under the current statute and its predecessors. *Coomer v. State*, 652 N.E.2d 60, 62 (Ind. 1995). "The trial court's ruling on a motion to withdraw a guilty plea arrives in this Court with a presumption in favor of the ruling." *Id.*

We will reverse the trial court 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. See also Davis v. State*, 770 N.E.2d 319, 326 (Ind. 2002) (holding that a trial court's decision on a request to withdraw a guilty plea is presumptively valid, and a party appealing an adverse decision must prove that the court has abused its discretion), *reh'g denied*.

[21] Robinson argues that his defense counsel informed the court at the sentencing hearing that he had been contacted at least a week and a half earlier of his desire to withdraw his plea of guilty. He points to his explanation that he was told there was DNA evidence indicating a 99% match when he signed the plea agreement and that he had received discovery the day before the sentencing hearing which revealed that no semen was detected on the two evidence swabs. He asserts his plea could not have been voluntary if it was based on the inaccurate belief that DNA evidence existed against him.

[22] The State argues that Robinson's claims are waived because nowhere in the filing did Robinson purport to verify the accuracy or truthfulness of the factual assertions contained within the motion, and the motion is devoid of any specific factual allegation regarding DNA evidence. It argues that Robinson's decision to request a jury trial without more evidence is insufficient to establish a manifest injustice under the statute.

[23] Even assuming that Robinson had not waived this issue, we cannot say that reversal is warranted. At the guilty plea hearing, Robinson indicated that he wished to plead guilty. The court informed him of his rights, and Robinson indicated that he understood his rights, that no one threatened him to plead guilty, and that he was voluntarily pleading guilty. The court found that Robinson's plea was made knowingly, voluntarily, and intelligently. Further, Robinson's defense counsel stated that the day before the plea he spoke with Robinson, provided him discovery, and discussed the evidence.

[24] With respect to Robinson's argument that he pled guilty because he had an inaccurate belief that DNA evidence existed against him, we note that he testified at the sentencing hearing that his defense counsel had told him, prior to his guilty plea, that there was DNA that was a "99% match" for him. Transcript Volume II at 27. However, later at the hearing he mentioned DNA again and stated "they was saying well they're going to find it anyway or they're going to get a DNA analysis person [to] come in and argue the fact that they did . . . ." *Id.* at 30. This testimony conflicts with Robinson's earlier statement that he pled guilty because his trial counsel informed him that there was a DNA match and suggests that Robinson was aware of the results of the DNA testing before he pled guilty. As mentioned above, we also note Robinson's defense counsel stated that he discussed the evidence with Robinson on the day before he pled guilty.

[25] Based upon our review of the record and under the circumstances, we conclude that Robinson has not overcome the presumption of validity accorded the trial

court's denial of his motion to withdraw his guilty plea. Such a denial was within the discretion of the court, and we cannot say its refusal to allow Robinson to withdraw his guilty plea constitutes a manifest injustice. *See Johnson v. State*, 734 N.E.2d 242, 245-246 (Ind. 2000) (holding that the defendant had not overcome the presumption of validity accorded the trial court's denial of his motion to withdraw his guilty plea, the trial court's refusal was well within its discretion, and the denial did not constitute a manifest injustice); *Coomer*, 652 N.E.2d at 63 (holding that the refusal to allow defendant to withdraw his guilty plea did not constitute manifest injustice); *Jeffries v. State*, 966 N.E.2d 773, 778 (Ind. Ct. App. 2012) ("Instances of manifest injustice may include any of the following, none of which are present here: 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."), *trans. denied*.

[26] For the foregoing reasons, we affirm the trial court's denial of Robinson's motion to withdraw his guilty plea.

[27] Affirmed.

Bradford, C.J., and Vaidik, J., concur.