

## 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

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Cody S. Urban,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff,*

September 16, 2021

Court of Appeals Case No.  
21A-CR-339

Appeal from the Dearborn Circuit  
Court

The Honorable James D.  
Humphrey, Judge

Trial Court Cause No.  
15C01-2007-F5-046

**Robb, Judge.**

## Case Summary and Issue

- [1] Cody Urban pleaded guilty to carrying a handgun without a license, a Level 5 felony. Prior to sentencing, he filed a motion to withdraw his plea. After a hearing, the trial court denied the motion and sentenced Urban to six years. Urban appeals and raises one issue for our review, which we restate as whether the trial court abused its discretion when it denied his motion to withdraw his guilty plea. Concluding the trial court did not abuse its discretion, we affirm.

## Facts and Procedural History

- [2] On July 3, 2020, Officer Luke Gentry of the Lawrence Police Department initiated a traffic stop of a truck being driven by Urban for failing to use its turn signal. Officer Gentry approached the truck and noticed that Zachary Rogers, a passenger, appeared to be suffering from an overdose. Officer Gentry requested assistance from paramedics and retrieved his department issued Narcan and administered it to Rogers. As Officer Gentry was assisting Rogers, Officer Garrett Schmaltz noticed a firearm in the vehicle and had Urban exit so that he could secure it.
- [3] Urban subsequently gave the officers permission to enter the vehicle to retrieve his identification which was in his wallet on the dashboard. When Officer Schmaltz opened Urban's wallet, he observed a small amount of methamphetamine inside it. *See* Appellant's Appendix, Volume 2 at 129. The officers searched the truck and found additional methamphetamine,

methamphetamine pipes, aluminum foil, and hypodermic syringes. The officers also discovered counterfeit \$100 bills in Urban's wallet.

[4] On July 6, 2020, the State charged Urban with the following: carrying a handgun without a license, a Level 5 felony; possession of paraphernalia, a Class A misdemeanor; and possession of methamphetamine, possession of a syringe, possession of heroin, maintaining a common nuisance, and forgery, all Level 6 felonies. On November 4, 2020, the parties executed a Negotiated Plea Agreement. Pursuant to the agreement, Urban would plead guilty to carrying a handgun without a license and the remainder of his charges would be dismissed. The trial court held a change of plea hearing the same day.

[5] At the change of plea hearing, the trial court advised Urban that, among other things, he had the right "to have a trial, and to have that trial be public, speedy and by jury." Transcript of Hearings, Volume I at 5-7. The trial court informed him that he would be forfeiting this right, as well as other constitutional rights, by pleading guilty, and Urban indicated that he understood he was giving up those rights. *See id.* at 6. When asked, Urban originally stated that he was not satisfied with his attorney; however, after a short recess, Urban stated that his disagreement with counsel had been resolved and he wished to proceed. Further, Urban stated that "[he] was not forced" and was "entering [the plea agreement] on [his] own free will." *Id.* at 9. The trial court then reviewed the plea agreement with Urban. Urban testified that he had read and understood

the agreement and again indicated that he was entering the plea agreement voluntarily. *See id.* at 9-15.

[6] Accordingly, the trial court found that Urban understood the nature of the charge against him and the possible consequences for the crime and determined that his plea was freely and voluntarily made. The trial court then took the plea agreement under advisement and set the matter for sentencing.

[7] On November 11, 2020, Urban filed a *pro se* motion to withdraw his plea agreement claiming he had been “misrepresented” by his attorney and “forced to take a plea agreement[.]” Appellant’s App., Vol. 2 at 101. On January 6, 2021, Urban filed a Verified Petition to Withdraw Plea. Following a hearing, the trial court denied Urban’s motion to withdraw his plea.

[8] On February 3, 2021, the trial court held a sentencing hearing and, pursuant to the plea agreement, sentenced Urban to six years with three years suspended to probation and the remainder to be served in the Indiana Department of Correction. Urban now appeals.

## Discussion and Decision

[9] Urban argues that the trial court abused its discretion when it denied his motion to withdraw his 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)

(citation and quotations omitted); *see also* [Ind. Code § 35-35-1-4\(c\)](#). Rulings on motions to withdraw guilty pleas are presumptively valid, and a party appealing an adverse decision must prove the court has abused its discretion. *Asher*, 128 N.E.3d at 530. 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.” *Coomer v. State*, 652 N.E.2d 60, 62 (Ind. 1995).

[10] Urban contends that he did not enter his guilty plea knowingly because he was improperly induced to enter the plea agreement. Specifically, Urban argues that his counsel “advised him that he had no other option than to accept the plea agreement.” Appellant’s Brief at 12. However, at the plea hearing the trial court explicitly advised Urban that he had the right “to have a trial, and to have that trial be public, speedy and by jury[,]” as well as advising him of other constitutional rights that he would be forfeiting by pleading guilty. Tr., Vol. I at 5-7. Urban indicated that he understood he was giving up these rights. *Id.* at 6. Further, Urban stated that “[he] was not forced” and was “entering [the plea agreement] on [his] own free will.” *Id.* at 9. And while Urban did indicate that he was unsatisfied with his attorney at the plea hearing, Urban later stated that their disagreement had been resolved. Thus, Urban’s statements at his guilty plea hearing show that his plea was freely and knowingly made, and he has failed to prove that withdrawal was necessary to correct a manifest injustice.

See [Ind. Code § 35-35-1-4\(c\)\(3\)](#). Therefore, we cannot say that the trial court abused its discretion when it denied Urban’s motion to withdraw his guilty plea.<sup>1</sup>

## Conclusion

[11] We conclude the trial court did not abuse its discretion when it denied Urban’s motion to withdraw his guilty plea. Accordingly, we affirm.

[12] Affirmed.

Bradford, C. J., and Altice, J., concur.

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<sup>1</sup> To the extent Urban argues that the trial court abused its discretion because he asserted his innocence, we note that Urban made no such assertion at the plea hearing. Further, a court maintains its discretion when an assertion of innocence is made after a defendant has already pled guilty. See [Carter v. State](#), 724 N.E.2d 281, 285 (Ind. Ct. App. 2000), *summarily aff’d*, 739 N.E.2d 126, 131 (Ind. 2000).