

## 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.



---

### ATTORNEY FOR APPELLANT

Timothy P. Broden  
Lafayette, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana  
  
Megan M. Smith  
Deputy Attorney General  
Indianapolis, Indiana

---

## IN THE COURT OF APPEALS OF INDIANA

---

Jason Collins,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff,*

April 29, 2022

Court of Appeals Case No.  
21A-CR-2520

Appeal from the Tippecanoe  
Superior Court

The Honorable Steven P. Meyer,  
Judge

Trial Court Cause No.  
79D02-2012-F1-15

**Robb, Judge.**

## Case Summary and Issue

- [1] Jason Collins pleaded guilty to attempted rape while armed with a deadly weapon, a Level 1 felony, and theft of a firearm, a Level 6 felony, and admitted to being an habitual offender. Prior to being sentenced, Collins filed a motion to withdraw his guilty plea. After a hearing, the trial court denied the motion and subsequently sentenced Collins to an aggregate term of forty years. Collins now appeals the trial court's denial of his motion to withdraw his guilty plea. Concluding that Collins waived his argument on appeal, we dismiss.

## Facts and Procedural History

- [2] On the evening of December 3, 2020, Collins broke into the vehicle of Cody Clem and stole a 9mm handgun with two magazines. Later that evening, Collins was driving and spotted L.I. walking along the road. Collins stopped, threatened to shoot L.I. with the stolen gun, and forced L.I. into his car.
- [3] While driving to a secluded location, Collins kept the gun pointed at L.I. and told her that he was going to rape her. L.I. asked to be released, but Collins responded by hitting her in the head with his fists and the gun. Collins repeatedly asked L.I. to perform oral sex on him, but she refused each time. Collins ultimately stopped the car and attempted to force L.I.'s face into his lap. A struggle ensued and L.I. scratched Collins and attempted to take the gun. The gun discharged, but no one was harmed.

- [4] Upon the discharging of the gun, Collins began apologizing to L.I. He expressed remorse for what he was doing and attempted to help L.I. fix her glasses which were damaged in the struggle. Collins then dropped L.I. off at a local church. L.I. proceeded to the hospital where she was questioned by local police. L.I. provided police an accounting of the events, a description of Collins and his car, and DNA samples from her cell phone and under her fingernails.
- [5] Subsequently, Collins was arrested and questioned by police. Collins admitted to his interactions with L.I., *see supra*, ¶¶ 2-4, as well as breaking into Clem's vehicle and stealing the handgun, although he claimed that after hearing the gun discharge he believed it to be a BB or CO2 gun, not an actual gun. Collins again expressed his remorse and articulated that his actions towards L.I. were caused by the sudden death of his life partner. Collins explained to the police that after the incident with L.I., he discarded the gun while driving along a country road. Despite attempts by the police to find the gun, it was never located. On a later date, Collins further discussed his remorse and the loss of his partner in an apology letter to L.I.
- [6] On December 10, 2020, the State charged Collins with thirteen counts, including Count I, attempted rape while armed with a deadly weapon, a Level 1 felony, and Count X, theft of a firearm, a Level 6 felony, and several offenses involving use of a firearm. The State also alleged that Collins was a habitual offender and requested a sentence enhancement pursuant to Indiana Code section 35-50-2-11(d) for the unlawful use of a firearm.

[7] On August 16, 2021, the parties executed a plea agreement. Pursuant to the agreement, Collins pleaded guilty to Count I and Count X and admitted to being an habitual offender. In exchange, the State agreed to dismiss the remaining charges and sentence enhancement. The trial court accepted the plea agreement, entered judgment against Collins, and set a sentencing hearing for November 2021. However, prior to the sentencing hearing, Collins filed a motion to withdraw his guilty plea claiming that he could rebut many of the charges against him.

[8] On November 5, 2021, the trial court heard arguments on Collins' motion to withdraw his guilty plea. Collins argued that his guilty plea should be withdrawn because he believed the State had DNA and ballistics evidence against him when he entered the plea agreement. He testified that when he was initially questioned by the police, he was told there was DNA and ballistics evidence linking him to the crimes. *See* Transcript, Volume 2 at 39-40. However, Collins acknowledged that at the time he entered his guilty plea he knew DNA and ballistics results had not been received by the State and despite this knowledge, he never followed up with the State or his attorney as to the whereabouts of the alleged evidence. *See id.* at 40. He further argued that he had new evidence that showed there was no deadly weapon, no attempted rape, and he was not an habitual offender. *See id.* at 36-37. Although Collins had previously admitted to stealing Clem's 9mm handgun and that handgun was the one he used while with L.I., Collins articulated that the gun he used was a CO2 powered gun and not a deadly weapon, that his interactions with L.I. were

consensual, and that L.I. got into his car willingly. *See id.* at 41. Collins also stated that this new evidence was known to him at the time he entered his guilty plea and yet he remained silent because he wanted to protect L.I.<sup>1</sup> *See id.* at 41-42.

[9] The State argued that none of the evidence presented by Collins was new or unknown to him at the time he entered the plea agreement and therefore he should not be able to withdraw his guilty plea. Additionally, the State argued that Collins' guilty plea was corroborated by multiple confessions from Collins, an apology letter he wrote to L.I., a statement provided by L.I., and surveillance footage confirming that Collins broke into Clem's car and stole Clem's handgun. The State also provided case law articulating that even if the gun used to perpetuate the crime was a CO2 or BB gun, such a gun can be a deadly weapon. The trial court agreed with the State and denied Collins' motion to withdraw his guilty plea.

[10] Following the hearing on Collins' motion to withdraw his guilty plea, the trial court conducted the scheduled sentencing hearing and ordered Collins to serve an aggregate sentence of forty years. Collins now appeals the denial of his motion to withdraw his guilty plea.

---

<sup>1</sup> Collins offered no evidence to rebut his status as an habitual offender.

## Discussion and Decision

- [11] Indiana Code section 35-35-1-4 governs a motion to withdraw a guilty plea. The trial court is required to grant a defendant's motion to withdraw a guilty plea when "necessary to correct a manifest injustice." Ind. Code § 35-35-1-4(b). Otherwise, "the court *may* allow the defendant by motion to withdraw his plea of guilty . . . for any fair and just reason unless the state has been substantially prejudiced by reliance upon the defendant's plea." *Id.* (emphasis added). On appeal, we review the trial court's ruling for an abuse of discretion. *Smallwood v. State*, 773 N.E.2d 259, 264 (Ind. 2002).
- [12] Collins contends that the trial court abused its discretion by failing to grant his motion to withdraw his guilty plea. Specifically, he now argues that a manifest injustice occurred when the trial court failed to consider whether the gun used to commit his crime against L.I. met the statutory definition of a firearm because Collin's decision to plead guilty was "presumably shaped by all charges pending against him," including possession of a firearm by a serious violent felon, pointing a firearm, and the enhancement for use of a firearm. Brief of Appellant at 8-9. At the hearing on his motion to withdraw his guilty plea, Collins raised multiple arguments as to why his motion to withdraw should be granted. *See supra*, ¶ 8. However, each of those previous arguments are different from the contention that the trial court failed to consider whether the handgun in question met the statutory definition of a firearm which he now argues in this appeal. Although Collins did previously argue that he did not use a deadly weapon, whether Collins had a deadly weapon or a firearm are two

different questions, determined by two different statutes. *See* Ind. Code § 35-47-1-5 (defining a firearm); *see also* Ind. Code § 35-31.5-2-86 (defining a deadly weapon). As a result, Collins' is now attempting to change his argument. A party may not add to or change his ground for objections in the reviewing court and to do so results in waiver on appeal. *Burton v. State*, 526 N.E.2d 1163, 1168 (Ind. 1988). Accordingly, Collins' argument on appeal is waived.

## Conclusion

[13] We conclude that Collins failed to advance an argument in the trial court that the gun he used to commit his crime against L.I. did not meet the statutory definition of a firearm and that his decision to plead guilty was shaped by all charges against him, including those related to the use of a firearm. Accordingly, Collins' argument is waived on appeal, and we dismiss.

[14] Dismissed.

Riley, J., and Molter, J., concur.