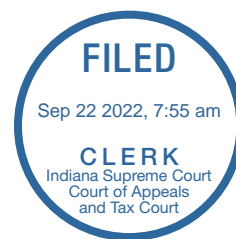


## MEMORANDUM DECISION

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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Aaron C. Massey,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

September 22, 2022

Court of Appeals Case No.  
22A-CR-547

Appeal from the Tippecanoe  
Superior Court

The Honorable Steven P. Meyer,  
Judge

Trial Court Cause No.  
79D02-1907-F3-30

**Weissmann, Judge.**

- [1] Aaron C. Massey asked to remain free for 60 days between his guilty plea and his sentencing so he could continue assisting the police with the apparent hope of leniency at sentencing. The prosecutor agreed, but no one memorialized this promise in the plea agreement. One day after Massey pled guilty, the parole board issued an arrest warrant in an unrelated case. Massey evaded the warrant for seven months, continuing to aid the police department.
- [2] When Massey finally faced sentencing, he called foul, claiming that the State defrauded him by inducing him to plead guilty with a promise of 60 days of freedom that it cut short with the arrest warrant. Massey moved to withdraw his guilty plea, presenting the parties' email exchanges to establish the part of the bargain omitted from the plea agreement.
- [3] Refusing to consider the emails, the trial court denied Massey's request to withdraw his guilty plea. We affirm, finding that Massey has not proven fraud and that he obtained the deal he negotiated.

## Facts

- [4] In 2019, police discovered Massey with several bags of methamphetamine, totaling more than seven grams, a digital scale, and \$1,340 in cash. The State charged Massey with dealing in methamphetamine, a Level 3 felony, and possession of methamphetamine, a Level 5 felony. It also alleged Massey was a habitual offender.
- [5] The trial court later ordered Massey released pending trial. A week later Massey's counsel informed the prosecutor by email that Massey would plead

guilty to a Level 4 felony “on the condition he can remain released and sentencing will be scheduled 60 days out.” Exhs., p. 29. The email also revealed that, during the 60 days, Massey planned to address a personal family issue and to continue assisting the Tippecanoe County Sheriff’s Department, with the apparent hope of leniency at sentencing. *Id.* The prosecutor responded by email, “That’s fine. We’ll agree to that.” *Id.*

[6] The next day Massey pleaded guilty to an amended charge of dealing in methamphetamine, a Level 4 felony, and admitted he was a habitual offender in exchange for dismissal of the other charges. The written plea agreement did not incorporate the condition that Massey remain free for 60 days between his plea and sentencing to pursue his family issue or work with police. And it contained an integration clause specifying that “this agreement embodies the entire agreement between the parties, and no promises or inducements have been made to the Defendant by the State that are not set out herein.” App. Vol. II, p. 72.

[7] During the guilty plea hearing in October 2020, the trial court summarized the plea agreement, including the integration clause. It then asked Massey, “Are those the terms as you understand (sic) in the Plea Agreement?” Tr. Vol. II, p. 7. Massey responded, “Yes, sir.” *Id.* The trial court also advised Massey that if the court accepted the plea agreement, the court was bound by its terms and could not change them. *Id.*

- [8] The trial court took the plea agreement under advisement until sentencing. Massey’s counsel requested that that the sentencing hearing occur at least 60 days later “because he has some family issues to take care of before.” *Id.* at 18. The State did not object. *Id.* Neither Massey nor the State elaborated, and they did not reveal their email communications regarding the plea agreement. The court scheduled the sentencing hearing more than 60 days later. The day after the guilty plea hearing, the Parole Board issued a warrant for Massey’s arrest for violating his parole in another matter through his commission of this offense. Upon learning of the warrant the next day, Massey absconded after removing the ankle monitor he was wearing as a condition of his release.
- [9] Massey did not appear at the scheduled sentencing hearing in February 2021. The trial court issued a warrant for his arrest, and Massey was back in custody by the end of May 2021. Four months later Massey moved to withdraw his guilty plea, arguing that it was based on an agreement that he would remain free until sentencing and the State had not honored that condition.
- [10] After a hearing, the trial court entered a detailed order denying Massey’s motion and later imposed a 16-year sentence consistent with the plea agreement.

## Discussion and Decision

- [11] This dispute centers on the emails between Massey’s counsel and the prosecutor. Massey claims those emails conditioned his guilty plea on his release until sentencing and were a binding part of the plea agreement. He

argues the State violated that condition before sentencing, so the broken plea agreement should be rescinded. In response, the State contends the trial court could not consider the emails, given that Massey acknowledged in person and in writing that the written plea agreement was the full agreement of the parties. We agree with the State.

## I. Standard of Review and Applicable Law

[12] Indiana Code § 35-35-1-4(b) governs motions to withdraw filed after a defendant has pleaded guilty but before the defendant is sentenced. The trial court must allow a defendant to withdraw a guilty plea if “necessary to correct a manifest injustice.” *Gross v. State*, 22 N.E.3d 863, 868 (Ind. Ct. App. 2014) (quoting Ind. Code § 35-35-1-4(b)). But the trial court must deny the motion if withdrawal of the plea would “substantially prejudice” the State. *Id.* Otherwise, the trial court may grant the defendant’s motion to withdraw a guilty plea “for any fair and just reason.” *Id.*

[13] We review a trial court’s ruling on a motion to withdraw a guilty plea for an abuse of discretion. *Id.* An abuse of discretion occurs when the trial court’s decision is clearly against the logic and effect of the facts and circumstances before it or the trial court misinterprets the law. *Id.* at 180.

## II. No Abuse of Discretion

[14] Massey claims the trial court erroneously refused to consider the emails between his counsel and the State. The trial court viewed the emails as extrinsic to the agreement and, therefore, excluded by the parol evidence rule, a rule of

contract interpretation applicable in our review of plea agreements. *See generally Venezuela v. State*, 898 N.E.2d 480, 482 (Ind. Ct. App. 2008) (noting that courts interpreting plea agreements are guided by principles of contract law).

- [15] The parol evidence rule dictates that evidence outside the terms of the contract “is inadmissible to add to, vary, or explain the terms of a written instrument if the terms of the instrument are clear and unambiguous.” *Cooper v. Cooper*, 730 N.E.2d 212, 215 (Ind. Ct. App. 2000).

Generally, where parties have reduced an agreement to writing and have stated in an integration clause that the written document embodies the complete agreement between the parties, the parol evidence rule prohibits courts from considering extrinsic evidence for the purpose of varying or adding to the terms of the written contract.

*Wind Wire, LLC v. Finney*, 977 N.E.2d 401, 405 (Ind. Ct. App. 2012). This rule, however, does not apply when a party was induced through fraudulent representations to enter the contract. *Circle Ctr. Dev. Co. v. Y/G Ind., L.P.*, 762 N.E.2d 176, 179 (Ind. Ct. App. 2002).

- [16] Massey does not assert the plea agreement is unambiguous. Instead, he asserts that the fraud exception to the parol evidence rule applies. He argues the State committed constructive fraud by inducing him to plead guilty through a promise of extended release; it then issued a parole warrant the day after his plea hearing. *See Kreighbaum v. First Nat. Bank & Tr.*, 776 N.E.2d 413, 420 (Ind. Ct. App. 2002) (noting that constructive fraud arises from a course of conduct which, if sanctioned by law, would produce an unconscionable advantage,

regardless whether actual intent to defraud existed); *see also Becker v. State*, 992 N.E.2d 697, 698 (Ind. 2013) (ruling that “the State is the State,” whether it acts through a deputy prosecutor or a state agency).

[17] To prove the State committed constructive fraud, Massey must establish, among other things, that it made deceptive material misrepresentations of past or existing facts or remained silent when it had a duty to speak. *See Kapoor v. Dybwad*, 49 N.E.3d 108, 124 (Ind. Ct. App. 2015). The alleged deceptive material representation here is the State’s email agreeing that Massey would remain free for 60 days between his guilty plea and sentencing to allow him to work with police and resolve a family matter.

[18] But as the State suggests and the trial court found, Massey, in fact, was free for seven months after his guilty plea, during which he assisted police in their investigations. Although his active parole warrant may have reduced his usefulness to police, Massey was still not deprived by the State of the promised 60 days of freedom nor the opportunity to assist police. Moreover, the parole warrant, the focus of Massey’s argument, was never served on him. Such facts show not only that the State did not deceive Massey but also that he was free after his guilty plea for far longer than he allegedly had bargained.

[19] Given that the record does not support Massey’s fraud claim, the trial court therefore properly rejected the evidence of the email exchange as extrinsic evidence barred by the parol evidence rule. *See Griffin*, 756 N.E.2d at 575 (ruling that court could not consider extrinsic evidence of other verbal terms of an

agreement between the State and a defendant when the written terms of the plea agreement were unambiguous).

[20] Accordingly, the unambiguous plea agreement did not contain any conditions relating to Massey's release between his guilty plea and sentencing. Neither did it prohibit issuance of a warrant during that period. Massey acknowledged in the agreement and at the guilty plea hearing that the written plea agreement embodied all of the terms of his deal with the State. Tr. Vol. II, p. 7; App. Vol. II, p. 72. Moreover, by the time Massey presented himself to the court for sentencing, he had been released for far longer than the 60 days he had been promised. Faced with these facts, the trial court did not abuse its discretion in denying Massey's motion to withdraw his guilty plea. *See* Ind. Code § 35-35-1-4(e) (defendant has the burden of proving by a preponderance of the evidence the grounds for withdrawal of the defendant's guilty plea).<sup>1</sup>

[21] We affirm the trial court's judgment.

Robb, J., and Pyle, J., concur.

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<sup>1</sup> This is precisely why we long have advised that counsel should reduce to writing all terms of a plea agreement. *See, e.g., Page v. State*, 706 N.E.2d 230, 231 (Ind. Ct. App. 1999); *see also* Ind. Code 35-35-3-3(a) ("No plea agreement may be made by the prosecuting attorney to a court on a felony charge except: (1) in writing; and (2) before the defendant enters a plea of guilty.")).