

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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James Eric Webster,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

July 6, 2023

Court of Appeals Case No.  
22A-CR-2735

Appeal from the Vanderburgh  
Superior Court

The Honorable Kristina Hamby  
Weiberg, Magistrate

Trial Court Cause No.  
82D03-2203-F4-1310

**Memorandum Decision by Judge Crone**  
Judge Kenworthy and Senior Judge Robb concur.

**Crone, Judge.**

## **Case Summary**

- [1] James Eric Webster pled guilty to level 5 felony prisoner possessing a weapon and two counts of level 6 felony intimidation pursuant to a negotiated plea agreement with the State. The trial court held a guilty plea hearing, advised Webster of his rights, and accepted the plea. Thereafter, during sentencing, Webster orally moved to withdraw his guilty plea. The trial court denied the motion. Webster now appeals, arguing that the trial court abused its discretion. We affirm.

## **Facts and Procedural History**

- [2] The State charged Webster with level 4 felony prisoner possessing a deadly weapon and four counts of level 6 felony intimidation. The State further alleged that Webster was a habitual offender. Webster entered into an oral plea agreement with the State wherein he agreed to plead guilty to a lesser charge of level 5 felony prisoner possessing a weapon, two counts of level 6 felony intimidation, and to being a habitual offender in exchange for dismissal of the remaining counts. Sentencing was left to the trial court's discretion.
- [3] The trial court held a guilty plea hearing on September 21, 2022. Webster appeared with counsel. During the hearing, the trial court advised Webster of his rights and heard the factual basis for the guilty plea. The court advised Webster of the maximum sentences for each of the convictions as well as the possibility of consecutive sentencing. Webster indicated that he understood the rights he was waiving by pleading guilty as well as the potential penalties.

Webster confirmed that his guilty plea was knowing and voluntary. The trial court scheduled a sentencing hearing for September 28, 2022. On that date, although his counsel appeared, Webster “refused to appear,” and the trial court reset the sentencing hearing for October. Appellant’s App. Vol. 2 at 7.

[4] A sentencing hearing was held on October 19, 2022. At the outset of the hearing, Webster made an oral motion to withdraw his guilty plea. He stated that he wished to engage in further plea negotiations with the State. The trial court stated, “Mr. Webster, I was the Judge that took your plea and, um, on that date you, you fully were aware of entering into that plea and knew what you were doing and, and saying on that date, so we are going to proceed with sentencing today.” Tr. Vol. 2 at 16. The trial court sentenced Webster to an aggregate term of nine years in the Department of Correction. This appeal ensued.

## **Discussion and Decision**

[5] Webster appeals the trial court’s denial of his oral motion to withdraw his guilty plea. Indiana Code Section 35-35-1-4(b) allows for the withdrawal of a guilty plea before imposition of sentence and provides in relevant part:

[T]he 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. The motion to withdraw ... 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 ...  
whenever the defendant proves that withdrawal of the plea is  
necessary to correct a manifest injustice.

Webster has waived our review of this issue because he did not tender to the trial court a “written, verified motion that presented specific facts to support the withdrawal of the guilty plea.” *Peel v. State*, 951 N.E.2d 269, 272 (Ind. Ct. App. 2011) (defendant’s failure to submit proper written motion to withdraw guilty plea resulted in waiver of issue on appeal); *see also Kinman v. State*, 152 N.E.3d 1060, 1060 (Ind. 2020) (per curiam) (affirming portion of Court of Appeals opinion finding that defendant’s oral motion to withdraw guilty plea was procedurally defective, so trial court did not abuse discretion in denying it). Accordingly, we affirm the trial court’s denial of his motion.

[6] Affirmed.

Kenworthy, J., and Robb, Sr.J., concur.