

## 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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Robert Wayne Lowe,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

October 12, 2022

Court of Appeals Case No.  
22A-CR-988

Appeal from the Fayette Circuit  
Court

The Honorable Hubert Branstetter,  
Judge

Trial Court Cause No.  
21C01-1908-F5-580

**Riley, Judge.**

## STATEMENT OF THE CASE

[1] Appellant-Defendant, Robert Wayne Lowe (Lowe), appeals the trial court's denial of his oral motion to withdraw his guilty plea.

[2] We affirm.

## ISSUE

[3] Lowe presents this court with one issue on appeal which we restate as:  
Whether the trial court abused its discretion when it denied Lowe's oral motion to withdraw his guilty plea.

## FACTS AND PROCEDURAL HISTORY

[4] On August 8, 2019, the State filed an Information, charging Lowe with dealing in methamphetamine, a Level 5 felony; escape, a Level 6 felony; and resisting law enforcement, a Class A misdemeanor. On November 6, 2019, the State amended its Information, adding an habitual offender charge. On November 20, 2019, the State filed an additional charge, alleging that Lowe unlawfully possessed a firearm as a serious violent felon, a Level 4 felony. On February 9, 2022, during the change-of-plea hearing, Lowe formally entered into a plea agreement with the State in which he agreed to plead guilty to Level 5 felony dealing in methamphetamine, Level 6 felony escape, and Level 4 felony unlawful possession of a firearm by a serious violent felon, in exchange for the State agreeing to dismiss the Class A misdemeanor resisting law enforcement charge and the habitual offender enhancement. The plea agreement specified the sentence as four years for dealing in methamphetamine, two years for

escape, and nine years for unlawful possession of a firearm by a serious violent felon, with all sentences to run concurrently. That same day, the trial court took Lowe's plea of guilty under advisement.

[5] On April 1, 2022, the trial court conducted a sentencing hearing. At the commencement of the hearing, Lowe orally moved to withdraw his plea agreement, which was denied by the trial court. The trial court then entered judgment of conviction and sentenced Lowe in accordance with the terms of the plea agreement.

[6] Lowe now appeals. Additional facts will be provided if necessary.

## **DISCUSSION AND DECISION**

[7] Lowe contends that the trial court abused its discretion when it denied his motion to withdraw the guilty plea, because withdrawal of the guilty plea was necessary to correct a manifest injustice and the State would not have been substantially prejudiced.

[8] As an initial matter, we address the State's argument that Lowe's motion to withdraw his guilty plea was procedurally defective because it was not in writing nor was it verified in accordance with Indiana Code section 35-35-1-4(b). Although Lowe orally made the motion at the commencement of the sentencing hearing, his motion was never reduced to writing. Accordingly, the trial court did not abuse its discretion by denying the procedurally defective motion.

[9] Even if Lowe had not procedurally defaulted his claim, he has not shown that he would have been entitled to any relief on appeal. Withdrawals of pleas are governed by Indiana Code section 35-35-1-4(b), which provides that,

[a]fter entry of a plea of guilty . . . but before imposition of sentence, 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. 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.

Our supreme court explained that:

[t]he court is required to grant [a motion to withdraw guilty plea] only if the defendant proves that withdrawal of the plea is necessary to correct a manifest injustice. The court must deny a motion to withdraw a guilty plea if the withdrawal would result in substantial prejudice to the State. Except under these polar circumstances, disposition of the petition is at the discretion of the court.

*Coomer v. State*, 652 N.E.2d 60, 61-62 (Ind. 1995) (internal citation and quotation marks omitted). The defendant “has the burden of establishing his grounds for relief by a preponderance of the evidence.” I.C. § 35-35-1-4(e). “Trial court rulings on [motions to withdraw guilty plea] are presumptively valid, and parties appealing an adverse decision must prove that a court has abused its discretion.” *Davis v. State*, 770 N.E.2d 319, 327 (Ind. 2002). “A trial court abuses its discretion only ‘when the failure of the trial court to grant the

motion would result in . . . a manifest injustice.’” *Id.* (quoting *Weatherford v. State*, 697 N.E.2d 32, 34 (Ind. 1998)).

[10] Lowe makes a two-fold argument in support of his overall claim that the trial court abused its discretion by denying his motion to withdraw his guilty plea: (1) his plea agreement included an expiration date of March 31, 2020, with the agreement becoming null and void if not signed and filed by that date; and (2) sending him to prison would amount to a manifest injustice because he is likely to be successfully rehabilitated if he is sentenced to drug court and receives appropriate treatment for his illegal substance addiction. We will address each argument in turn.

[11] “Plea agreements are contracts and once a trial court accepts it, a plea agreement and its terms are binding upon the trial court, the State, and the defendant.” *Nolan v. State*, 177 N.E.3d 881, 883 (Ind. Ct. App. 2021), *trans. denied*. Because a plea agreement is a contract, the principles of contract law can provide guidance when considering plea agreements. *Id.* A party can waive a contract term when he acts inconsistently with that right. *Welty Bldg. Co., Ltd. v. Indy Fedreau Co., LLC*, 985 N.E.2d 792, 798 (Ind. Ct. App. 2013). Waiver need not be in express terms and may be implied from the acts, omissions, or conduct of the parties. *Id.* Even though the terms of the plea agreement required the agreement to be signed and filed by March 31, 2020 to be valid, the agreement was filed with the trial court on February 9, 2022. However, immediately prior to the filing on February 9, 2022, Lowe attended the change-of-plea hearing where he repeatedly expressed an intent to proceed

with the plea agreement. The trial court repeated the sentencing consequences and explained the terms of the agreement and Lowe indicated that he understood. Lowe admitted to having committed the charges he pled guilty to and stated that he did wish to enter a plea of guilty. Accordingly, based on Lowe's actions and conduct during the change-of-plea hearing, we find that Lowe waived the term of the plea agreement which would render the plea null and void if not filed by March 31, 2020.

[12] Turning to Lowe's claim that a prison sentence amounts to manifest injustice in his case, we note that Indiana Code section 35-35-1-4(c) categorizes instances of manifest injustice as "(1) the convicted person was denied the effective assistance of counsel; (2) the plea was not entered or ratified by the convicted person; (3) the plea was not knowingly and voluntarily made; (4) the prosecuting attorney failed to abide by the terms of a plea agreement; or (5) the plea and judgment of conviction are void or voidable for any other reason." Manifest injustice is a "necessarily imprecise standard . . . [but] concerns about injustice carry greater weight when accompanied by credible evidence of involuntariness, or when the circumstances of the plea reveal that the rights of the accused were violated." *Coomer*, 652 N.E.2d at 62.

[13] Regret of a specifically negotiated fixed sentence is not recognized by the Legislature as one of the limited bases for finding a manifest injustice, nor does Lowe's insistence that he now wants "to attempt[] to get into drug court" amount to a manifest injustice. (Appellant's Br. p. 7). Therefore, we find that

the trial court did not abuse its discretion by denying Lowe's motion to withdraw his guilty plea.

## **CONCLUSION**

[14] Based on the foregoing, we hold that the trial court did not abuse its discretion by denying Lowe's motion to withdraw his guilty plea.

[15] Affirmed.

[16] Bailey, J. and Vaidik, J. concur