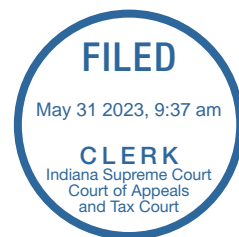


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Desmond L. Crews,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 31, 2023

Court of Appeals Case No.
23A-CR-44

Appeal from the Lake Superior
Court

The Honorable Salvador Vasquez,
Judge

Trial Court Cause No.
45G01-2111-MR-51

Memorandum Decision by Judge Brown
Judges Robb and Crone concur.

Brown, Judge.

[1] Desmond L. Crews appeals the trial court’s refusal to consider his *pro se* motion to withdraw his guilty plea. We affirm.

Facts and Procedural History

[2] On October 31, 2021, Crews was driving his girlfriend’s car when Tariq Silas, in a separate vehicle, received a phone call from Sheldon Stokes, who reported an altercation he had with a group of individuals. Crews and a few other friends joined Silas in his car, and the group began searching for the group Stokes previously encountered. Once they located the group Stokes had identified in Hammond, Indiana, Crews and three others exited the vehicle, Crews fired a 9-millimeter handgun in the direction of the group, at least one other person in their group discharged a weapon, and a thirteen-year-old dropped to the ground and subsequently died.

[3] On November 2, 2021, Crews was charged with Count I, murder; and Count II, attempted murder as a level 1 felony. On September 1, 2022, Crews and his counsel signed a plea agreement, which provided that Crews agreed to plead guilty to Count I, murder, he would be sentenced on Count I to fifty-five years in the Indiana Department of Correction (“DOC”), the State would dismiss Count II, Crews had a right to plead not guilty, and he entered the agreement “voluntarily and of his own accord.” Appellant’s Appendix Volume II at 67.

[4] On September 2, 2022, the court held a hearing at which Crews pled guilty and affirmed that he had reviewed the entire plea agreement with his attorney. He responded “[n]o” when asked if he was under the influence of a drug or

medication that would affect his understanding of the proceeding. Transcript Volume II at 6. He stated he understood the plea agreement's terms and acknowledged there was "an attached incorporated here an Exhibit A, which is the stipulated factual basis." *Id.* at 9. He responded in the negative when asked if he had any questions. The prosecutor reviewed the charge that Crews "did knowingly or intentionally kill another human being," to which Crews responded that he understood the charge and had no questions about it, and he understood the stipulated factual basis. *Id.* at 11. After Crews's attorney requested a moment to speak with him, the following exchange occurred:

THE COURT: At some point I need to make the finding that you have knowingly and voluntarily made your guilty plea, you've done it with assistance of counsel, you understand all of your rights – all the rights that you would have if you had a trial, all the rights that you're waiving by pleading guilty.

If I get the impression that you do not want to do this, if I get the impression that you are – that you would rather go to trial, then we're going to trial.

So I need – you – you show some hesitancy in – on some of the questions I'm asking you and that makes me pause, also.

Are you sure you want to plead guilty to the charge of murder, Mr. Crews?

MR. CREWS: Yes.

Id. at 21. The court again asked Crews if he understood the rights he would waive by pleading guilty and if it was his intent to plead guilty, and Crews answered affirmatively. Crews's counsel stated she had reviewed the entire plea

agreement with Crews and believed that he had a full understanding of it.

Crews pled guilty, and the court accepted his guilty plea and set sentencing for November 4, 2022.

- [5] On November 2, 2022, Crews, *pro se*, filed a “Motion for Withdraw of Plea,” which stated in its entirety: “Comes now defendant, Desmond Crews, request that the court allow a withdraw[al] of plea. A hearing for sentencing is set for, Friday, November 4, 2022. The State of Indiana felony public defender . . . has been notified.” Appellant’s Appendix Volume II at 89. On November 4, 2022, the court held a sentencing hearing at which the court addressed Crews’s *pro se* motion, stating: “It certainly is not something that the Court would necessarily consider because it does not follow the – the statute for withdrawing the plea. . . . And certainly because it was something not filed by his appointed counsel, it’s something . . . that . . . will not necessarily be considered for the reasons stated.” Transcript Volume II at 31. Crews’s counsel clarified the reason for which Crews had filed the *pro se* motion, stating, “it was not the intent to withdraw as to the culpability or acting in concert with the others, it was with regard to him wanting to withdraw . . . for renunciation of his American citizenship with regard to sovereign citizenship.” *Id.* at 32-33. The court sentenced Crews to fifty-five years in the DOC.

Discussion

- [6] Crews asserts that the trial court abused its discretion in denying his *pro se* motion to withdraw his guilty plea. He claims that withdrawal was necessary to correct a manifest injustice and, “[i]f given the opportunity, Crews may have

established one ground for relief under Ind. Code §[]35-35-1-4(c)(1)[-](5).” Appellant’s Brief at 9. The State contends that Crews was represented by counsel, the court was not required to consider his *pro se* motion, and Crews did not seek to withdraw his plea for any fair and just reason because he sought “to renounce his United States citizenship and assume ‘sovereign citizenship’ instead.” Appellee’s Brief at 10.

[7] It is well-settled law that “[w]hen a defendant files a *pro se* motion after counsel has been appointed to represent him, . . . the trial court is not required to consider the defendant’s *pro se* request.” *Anderson v. State*, 160 N.E.3d 1102, 1102 (Ind. 2021). Rather, consideration of a *pro se* motion after counsel has been appointed is left to the trial court’s discretion. *Id.*; *see also Underwood v. State*, 722 N.E.2d 828, 832 (Ind. 2000) (“To require the trial court to respond to both Defendant and counsel would effectively create a hybrid representation to which Defendant is not entitled.”).

[8] Ind. Code § 35-35-1-4(b) governs motions to withdraw guilty pleas filed after a defendant has pled guilty but before the trial court has imposed a sentence. It provides:

After entry of a plea of guilty, or guilty but mentally ill at the time of the crime, but before imposition of sentence, the court may allow the defendant by motion to withdraw his plea of guilty, or guilty but mentally ill at the time of the crime, for any fair and just reason unless the state has been substantially prejudiced by reliance upon the defendant’s plea. The motion to withdraw the plea of guilty or guilty but mentally ill at the time of the crime made under this subsection 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, or guilty but mentally ill at the time of the crime, whenever the defendant proves that withdrawal of the plea is necessary to correct a manifest injustice.

Ind. Code § 35-35-1-4(b).

[9] According to Ind. Code § 35-35-1-4(c):

[W]ithdrawal of the plea is necessary to correct a manifest injustice whenever:

- (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.

A defendant has the burden to prove by a preponderance of the evidence and with specific facts that he should be permitted to withdraw his plea. Ind. Code § 35-35-1-4(e); *Smith v. State*, 596 N.E.2d 257, 259 (Ind. Ct. App. 1992). A defendant must tender to the trial court a “written, verified motion that present[] specific facts to support the withdrawal of the guilty plea.” *Peel v.*

State, 951 N.E.2d 269, 272 (Ind. Ct. App. 2011). “A defendant’s failure to submit a verified, written motion to withdraw a guilty plea generally results in waiver of the issue of wrongful denial of the request.” *Id.* (quoting *Carter v. State*, 739 N.E.2d 126, 128 n.3 (Ind. 2000)). Crews did not tender a motion that complied with the requirements of the statute, and he has waived the issue.

[10] Even if Crews had not waived this issue, we cannot say reversal is warranted. “Manifest injustice” and “substantial prejudice” are necessarily imprecise standards, and an appellant seeking to overturn a trial court’s decision faces a high hurdle. *Coomer v. State*, 652 N.E.2d 60, 62 (Ind. 1995). “The trial court’s ruling on a motion to withdraw a guilty plea arrives in this Court with a presumption in favor of the ruling.” *Id.* We will reverse the trial court only for an abuse of discretion. *Id.* 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.” *Id.* See also *Davis v. State*, 770 N.E.2d 319, 326 (Ind. 2002) (holding that a trial court’s decision on a request to withdraw a guilty plea is presumptively valid, and a party appealing an adverse decision must prove that the court has abused its discretion), *reh’g denied*.

[11] The record reveals Crews intended to renounce his American citizenship and argue he was a sovereign citizen. As noted in *Partee v. State*, there exists a “loosely-formed group of citizens who believe that they are sovereign individuals, beyond the reach of any criminal court.” 184 N.E.3d 1225, 1227

n.2 (Ind. Ct. App. 2022) (citing *Lewis v. State*, 532 S.W.3d 423, 430-431 (Tex. Ct. App. 2016)).

These so-called “sovereign citizens” share a common vernacular and courtroom strategy. Courts across the country have encountered their particular brand of obstinacy—not consenting to trial, arguing over the proper format and meaning of their names, raising nonsensical challenges to subject matter jurisdiction, making irrelevant references to the Uniform Commercial Code, and referring to themselves as trustees or security interest holders.

Hotep-El v. State, 113 N.E.3d 795, 808 (Ind. Ct. App. 2018) (quoting *Lewis*, 532 S.W.3d at 430-431), *trans. denied*; *see also Taylor-Bey v. State*, 53 N.E.3d 1230, 1232 (Ind. Ct. App. 2016) (noting that “sovereign citizen” and similar arguments are baseless and should be “summarily rejected”) (quoting *United States v. Benabe*, 654 F.3d 753, 767 (7th Cir. 2011)). The denial of Crews’s motion to withdraw his guilty plea was within the discretion of the trial court, and we cannot say its refusal constitutes manifest injustice. *See Jeffries v. State*, 966 N.E.2d 773, 778 (Ind. Ct. App. 2012) (“Instances of manifest injustice may include any of the following, none of which are present here: a defendant is denied the effective assistance of counsel, the plea was not entered or ratified by the defendant, the plea was not knowingly and voluntarily made, the prosecutor failed to abide by the terms of the plea agreement, or the plea and judgment of conviction are void or voidable.”), *trans. denied*.

[12] For the foregoing reasons, we affirm the trial court.

[13] Affirmed.

Robb, J., and Crone, J., concur.