

MEMORANDUM DECISION

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ATTORNEYS FOR APPELLANT

Laura A. Raiman
Columbus, Indiana

R. Patrick Magrath
Madison, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Catherine E. Brizzi
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Michael R. Albertson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

March 30, 2023

Court of Appeals Case No.
22A-CR-2514

Appeal from the Bartholomew
Superior Court

The Honorable James D. Worton,
Judge

Trial Court Cause No.
03D01-2201-F4-499

Memorandum Decision by Chief Judge Altice
Judges Riley and Pyle concur.

Altice, Chief Judge.

Case Summary

[1] Michael R. Albertson pleaded guilty to Level 4 felony burglary, pursuant to a negotiated plea agreement with the State. The trial court accepted the plea, entered judgment of conviction, and released Albertson to electronic monitoring pending sentencing. Four months later, at his delayed sentencing hearing, Albertson orally moved to withdraw his guilty plea. The trial court denied the motion and proceeded with sentencing pursuant to the terms of the plea agreement. On appeal, Albertson contends that the trial court abused its discretion by denying his motion to withdraw the guilty plea.

[2] We affirm.

Facts & Procedural History

[3] On January 21, 2022, officers of the Columbus Police Department were dispatched to an apartment complex on a report of a burglary. Gabrianna Hayes and Christina Henderson informed the officers that Albertson, Christina's ex-boyfriend, had entered their second-floor apartment overnight and stolen Christina's cell phone. Gabrianna provided the officers with video footage from her living room showing "a subject walking softly, shining a flashlight, wearing jeans, a hooded sweatshirt with the hood up, and a jacket over the hood." *Appendix* at 20. The subject walked over to where Christina was sleeping on the couch and appeared to unplug a phone. Gabrianna believed the subject entered through the rear balcony, as there was no video

footage from the front-door camera at that time and the case to the phone was found on the balcony.

- [4] Later that day, officers returned to the apartment complex and found Albertson outside. He was advised of his Miranda rights, and he then spoke with the officers. He initially denied taking the phone but eventually made incriminating statements, including that he had used a ladder to enter through the balcony door and that the phone was at his mother's house.
- [5] On January 26, 2022, the State charged Albertson with Level 4 felony burglary and Class A misdemeanor theft. Albertson filed a motion to suppress in which he claimed that the statements he made to the officers on the day of his arrest were involuntary. Following a hearing on the motion to suppress, held four days before the scheduled jury trial, the trial court denied the motion, finding that "defendant's statements to Police were made freely and voluntarily" and "not made as a result of a promise of immunity or mitigation of punishment." *Id.* at 74.
- [6] On May 16, 2022, the day the motion to suppress was denied, Albertson entered into a plea agreement with the State. He agreed to plead guilty to Level 4 felony burglary. In return, the State agreed to the dismissal of the remaining count and a separate criminal matter. The agreement also provided for the advisory sentence of six years with all but time served suspended to three years of probation with community corrections (transition to straight probation

possible after two years of probation and community corrections with no violations).

[7] The trial court held a change-of-plea hearing that same day, at which time the court fully and properly advised Albertson of his constitutional rights and the implications of his plea. Albertson acknowledged that he was pleading guilty because he was “in fact guilty [and] for no other reason” and that his plea was his “own free choice and decision.” *Transcript* at 67, 68. After Albertson admitted that he broke and entered Gabrianna’s apartment with the intent to commit a felony or theft therein, the trial court accepted the plea agreement and entered judgment of conviction accordingly. Albertson was then released from jail with electronic monitoring pending sentencing, which was delayed due to defense counsel having surgery.

[8] On August 17, 2022, Albertson appeared for the sentencing hearing and requested a continuance because he wanted an opportunity to hire private counsel. The trial court granted a thirty-day continuance.

[9] At the rescheduled sentencing hearing on September 21, 2022, Albertson appeared with his original counsel, as he did not hire new counsel. He orally requested that he be allowed to withdraw his plea of guilty. Albertson testified that he had changed his mind regarding the plea and that he believed the State would not be able to prove his guilt at trial. He explained further:

It’s not even really that I am asking to withdraw the plea of guilty, I’m just asking to present my side of this, my evidence, because this was a sham and I, I didn’t do this thing and I don’t

want to go down with this. And I believe that the State cannot prove that a crime ... ever took place and I, I have [] an alternative theory on probably what happened to the phone, if anything did. Uh, and, and so I, I truly believe that, my case is one that the charges should be dismissed.

Id. at 88.

[10] The State objected to the motion to withdraw the negotiated plea, noting that the motion was not made in writing or verified and arguing that there was no indication of a manifest injustice. The trial court agreed that there had been no showing of a manifest injustice and observed that Albertson, after being fully advised, had admitted committing the burglary. The court noted, “I mean it sounds to me like he just wants to [] get a second bite at this thing.” *Id.* at 90. Albertson responded that since he pleaded guilty he “came to learn the law” that pertains to the case. *Id.* at 92. The court then explained:

If I grant the Motion to Withdraw this Plea, I am going to set this for a jury trial in thirty days and there will be no pleas entertained ... at all. Other than pleading as charged.... [I]f you are saying that you are not guilty, that’s fine, we will go to jury trial and you will face the jury. We will get it done.

Id. Albertson responded, through counsel, that he would like to proceed with sentencing and then appeal the denial of his motion to withdraw.

[11] The trial court sentenced Albertson according to the negotiated plea agreement. He now appeals the denial of his motion to withdraw his guilty plea.

Discussion & Decision

[12] Ind. Code § 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.

Albertson's appeal fails out of the gate 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). His failure in this regard results in waiver of the issue on appeal. *See id.* (citing *Carter v. State*, 739 N.E.2d 126, 128 n. 3 (Ind. 2000)).

[13] Waiver notwithstanding, we find that Albertson has not established that the trial court abused its discretion in denying his motion to withdraw the guilty plea after it had been accepted by the court but before sentencing. Albertson has never challenged the voluntariness of his guilty plea, and he acknowledges on appeal that at the time he entered the plea, he did not maintain his innocence. Indeed, he expressly acknowledged his guilt at the change-of-plea

hearing and admitted that he broke and entered the apartment with the intent to commit a felony or theft therein.

[14] Our Supreme Court has recognized:

There is a substantive difference between a defendant who maintains innocence but asks the court to impose punishment without trial, and one who concedes guilt in one proceeding but contradicts that admission by claiming innocence in a later proceeding. In the former case, the defendant has consistently denied culpability, and has therefore never made the reliable admission of guilt that Indiana requires. In the latter case, a defendant under oath has told the court two opposing stories, both of which cannot be true.

An admission of guilt that is later retracted may nonetheless be reliable.

Carter, 739 N.E.2d at 130.

[15] In addition to providing differing statements regarding his guilt at various hearings, we observe that his protestation of innocence at the sentencing hearing was general in nature and not unequivocal. In fact, it seemed as though his real position, though not explained, was that he did not believe the State would be able to prove his guilt at trial. Notably, when the trial court indicated that it would grant the motion (and set the matter for jury trial in thirty days) if Albertson was saying he was not guilty, Albertson asked the court to proceed with sentencing.

[16] Under the circumstances, the trial court was best situated to assess the reliability of Albertson's vacillating assertions regarding his innocence. *See id.* ("A credible admission of guilt, contradicted at a later date by a general and unpersuasive assertion of innocence, may well be adequate for entering a conviction."). The trial court did not abuse its discretion here.

[17] Judgment affirmed.

Riley, J. and Pyle, J., concur.