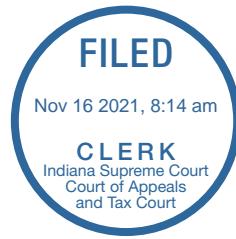


MEMORANDUM DECISION

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

David D. Morris,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 16, 2021
Court of Appeals Case No.
21A-CR-1228

Appeal from the Lake Superior
Court
The Honorable Samuel L. Cappas,
Judge
Trial Court Cause No.
45G04-1802-F5-13

Najam, Judge.

Statement of the Case

[1] David D. Morris appeals the trial court’s denial of his motion to withdraw his guilty plea. Morris raises a single issue for our review, namely, whether the trial court abused its discretion when it denied his motion. We affirm.

Facts and Procedural History

- [2] In April of 2016, the State charged Morris with robbery, as a Level 5 felony, and theft, as a Level 6 felony, in cause number 45G04-1604-F5-36 (“F5-36”). In February of 2018, in cause number 45G04-1802-F5-13 (“F5-13”), the State charged Morris with the following offenses: possession of cocaine, as a Level 5 felony; possession of cocaine, as a Level 6 felony; two counts of counterfeiting, as Level 6 felonies; and theft, as a Class A misdemeanor.
- [3] In August of 2019, Morris and the State entered into a plea agreement in which Morris agreed to plead guilty to robbery, as a Level 5 felony, in cause number F5-36, and to theft, as a Class A misdemeanor, in cause number F5-13. In exchange, the State agreed to dismiss the other charges in the two cause numbers. The plea agreement provided that, for both of the charges to which Morris was pleading guilty, the parties were “free to fully argue their respective positions as to the sentence to be imposed by the Court.” Appellant’s App. Vol. 2 at 45. That is, the plea agreement left sentencing open to the discretion of the trial court.
- [4] The parties submitted the plea agreement to the trial court, and the court held a hearing on the agreement. At that hearing, the court asked Morris if he had

“read and reviewed” the plea agreement with his attorney, and Morris responded, “Yes.” Tr. Vol. 2 at 5. The court informed Morris that, on the Level 5 felony offense, the plea agreement provided:

With regard to your sentence, the parties are free to fully argue their respective positions as to the sentence I will impose. Level 5 felonies carry a possible penalty between one to six years in jail or prison with an advisory sentence of three years. You get one day credit for every three days that you’ve served.

Id. Likewise, for the Class A misdemeanor, the court informed Morris that:

With regard to your sentence, the parties are free to fully argue their respective positions as to the sentence that I will impose. Class A Misdemeanors are punishable up to one year in the Lake County Jail or \$5,000 fine. Any or all the jail time or fine can be suspended. You get one day credit for every day that you serve on a misdemeanor.

Id. The court asked Morris if he understood the sentencing provisions of his plea agreement, and Morris responded, “Yes.” *Id.* at 6. The court further reviewed the rest of the plea agreement and Morris’s constitutional rights with him, and Morris agreed that he understood what he was doing by entering into the plea agreement and that it was his informed desire to enter into that agreement. And he expressly agreed that no one had made him any “promise[s]” to induce him to enter into the plea agreement. *Id.* at 9. The trial court took the plea agreement under advisement and set the matter for sentencing.

[5] However, prior to sentencing, Morris’s counsel withdrew his appearance. Thereafter, Morris obtained new counsel. Morris then moved to withdraw his guilty plea. According to Morris, his original counsel had “misled” him and “induced” him to enter into the plea agreement by “represent[ing] to Morris that there would be no jail time” under the plea agreement.¹ Appellant’s App. Vol. 2 at 56-57. The trial court denied Morris’s motion to withdraw his guilty plea, and this appeal ensued.²

Discussion and Decision

[6] Morris appeals the trial court’s denial of his motion to withdraw his guilty plea.³ As our Supreme Court has explained:

Motions to withdraw guilty pleas are governed by Ind. Code § 35-35-1-4. After the plea of guilty but before sentencing, a court may grant the motion for “any fair or just reason.” *Id.* However, the court is required to grant the motion to prevent “manifest injustice” and is required to deny the motion when the State would be “substantially prejudiced.” *Id.* The trial court’s decision is reviewed for abuse of discretion. *Id.* Upon appeal:

¹ The night before the evidentiary hearing in the trial court, the State confirmed with Morris’s original counsel that he would testify at the hearing. However, Morris’s original counsel did not appear at the hearing.

² The trial court granted Morris’s request to file a belated notice of appeal from a final judgment, and the court stayed further proceedings pending the resolution of this appeal.

³ The trial court has not yet accepted Morris’s plea agreement. Thus, the State’s argument that under the agreement Morris waived his right to appeal the denial of his motion to withdraw his guilty plea is not supported by the record.

The trial court's ruling on a motion to withdraw a guilty plea arrives in our Court with a presumption in favor of the ruling. *Coomer v. State*, 652 N.E.2d 60, 62 (Ind. 1995). One who appeals an adverse decision on a motion to withdraw must therefore prove the trial court abused its discretion by a preponderance of the evidence. *Weatherford v. State*, 697 N.E.2d 32, 34 (Ind. 1998). We will not disturb the court's ruling where it was based on conflicting evidence. *Id.*

Johnson v. State, 734 N.E.2d 242, 245 (Ind. 2000).

Smallwood v. State, 773 N.E.2d 259, 264 (Ind. 2002).

- [7] Morris asserts that the trial court abused its discretion when it denied his motion to withdraw his guilty plea. Specifically, he contends that it was “uncontroverted . . . that his previous counsel informed him that the State would not be seeking any jail time when it came to argue sentencing.” Appellant’s Br. at 10. Accordingly, he continues, the trial court was required to grant his motion to withdraw in order to correct a manifest injustice.
- [8] We cannot agree. Morris’s assertions notwithstanding, the record shows that the plea agreement provided for an open plea, and the plea agreement plainly states that the parties would be free to argue sentencing. Morris informed the trial court that he had read and reviewed that language with his counsel. The trial court read that language to Morris and informed him of the sentencing ranges and the advisory sentences for the offenses. Morris confirmed in open court that he understood those sentencing provisions. Significantly, he further

confirmed in open court that he had entered into the plea agreement without having been promised anything. Tr. Vol. 2 at 9.

[9] Thus, contrary to Morris's premise on appeal, the evidence is not "uncontroverted." There is ample evidence on this record that the trial court did not abuse its discretion when it denied Morris's motion to withdraw his guilty plea. At best, even when giving Morris's affidavit credit, the evidence is conflicting on the question of whether Morris was induced to enter into the plea agreement by his counsel's alleged promise that the State would not seek jail time at sentencing. Where the evidence is conflicting, "[w]e will not disturb the court's ruling . . ." *Smallwood*, 773 N.E.2d at 264 (quoting *Johnson*, 734 N.E.2d at 245). We therefore affirm the trial court's denial of Morris's motion to withdraw his guilty plea.

[10] **Affirmed.**

Riley, J., and Brown, J., concur.