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IN THE
COURT OF APPEALS OF INDIANA

NICKOLAS SANDIFER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-1004-CR-186
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas P. Stefaniak, Jr., Senior Judge
Cause Nos. 45G04-0811-FD-120 and 45G04-0811-FD-122

November 4, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Nickolas Sandifer appeals the trial court's denial of his unverified, oral motion to withdraw his guilty plea. He presents a single issue for our review, namely, whether the trial court abused its discretion when it denied his motion to withdraw his guilty plea.

We affirm.

FACTS AND PROCEDURAL HISTORY

On October 23, 2009, Sandifer entered into a plea agreement and submitted it to the trial court. Under the terms of the written agreement, Sandifer pleaded guilty to two counts of theft, as Class D felonies, and he agreed to serve consecutive thirty-month sentences. In exchange for his plea, the State dismissed two counts of fraud, Class D felonies. The trial court accepted the plea agreement after Sandifer stipulated to the factual basis and the court determined that he was entering the plea knowingly and voluntarily.

At sentencing, Sandifer orally moved to withdraw his guilty plea. The State objected, and the trial court denied the motion. The trial court entered judgment of conviction and sentenced Sandifer according to the terms of his plea agreement. This appeal ensued.

DISCUSSION AND DECISION

After a guilty plea is entered, but before a sentence is imposed, a defendant may move to withdraw his guilty plea for any fair and just reason unless the State has been substantially prejudiced by its reliance upon the plea. Ind. Code § 35-35-1-4(b); Brightman v. State, 758 N.E.2d 41, 44 (Ind. 2001). The defendant must prove by a

preponderance of the evidence that the withdrawal is necessary to correct a manifest injustice. I.C. § 35-35-1-4(b). Absent such a showing, the decision to grant or deny the motion is solely within the trial court's discretion. Id.

Therefore, we review the trial court's denial of a motion to withdraw guilty plea for an abuse of discretion. Id. On appeal, the trial court's ruling is cloaked with a presumption of validity. Brightman, 758 N.E.2d at 44. "A trial court abuses its discretion only 'when the failure of the trial court to grant the motion would result in . . . a manifest injustice.'" Davis v. State, 770 N.E.2d 319, 326 (Ind. 2002).

Sandifer contends that the trial court abused its discretion when it denied his motion to withdraw his guilty plea. Initially, we note that a motion to withdraw a guilty plea must be in writing and verified and must state facts in support of the relief demanded. I.C. 35-35-1-4(b). When the defendant fails to submit a written, verified motion to withdraw a guilty plea, the issue has been waived. Carter v. State, 739 N.E.2d 126, 128 n.3 (Ind. 2000); Smith v. State, 593 N.E.2d 1208, 1209 (Ind. Ct. App. 1992), trans. denied. Sandifer failed to submit a written, verified motion to withdraw. Instead, he made an oral motion to withdraw the guilty plea during the sentencing hearing. Consequently, Sandifer has waived this issue.

Waiver notwithstanding, Sandifer has failed to demonstrate that the withdrawal of his guilty plea was required to correct a manifest injustice. "Manifest injustice" is a necessarily imprecise standard, and an appellant seeking to overturn a trial court's decision faces a high hurdle. See Coomer v. State, 652 N.E.2d 60, 62 (Ind. 1995). 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. Id.

At sentencing, Sandifer engaged in the following colloquy with the trial court:

> Sandifer: Your Honor, on the plea agreement, I don't want to accept that plea. Because I told you before I got that plea with my P.D., my last attorney, and I had took that plea, you know what I am saying, like under some pressure because I ain't [sic] know where to go with my case at [sic] because I was never given nothing but this one piece of paper on my case. I never had no . . . .
>
> Court: What kind of pressure do you think you were under?
>
> Sandifer: Like, um, the pressure I was in. I ain't know nothing about my case or I never had any paperwork on my case but this, the probable cause affidavit. I was never given nothing to show no evidence, no State's discovery, no nothing. I didn't know nothing about my case to want to proceed, if I wanted to, you know what I am saying, confront my accusers or anything. So I was just kept . . . never told nothing. You know when it got down to a deadline date, she was like, you can take this or whatever. I was like, you are not going to give me a fighting chance so I can see if I want to file a deposition, I want to go to trial, or anything. So it was like I got to the date, and it was like . . . .

Sentencing Transcript at 22-23.

Sandifer then stated that he "never" saw his attorney prior to his entering the plea agreement. Id. at 24. When the court asked Sandifer why, if he was so disappointed in his attorney, he had not told the court about that during the guilty plea hearing, Sandifer responded, "I don't know why, Your Honor." Id. at 28. The trial court then asked Sandifer whether he thought he would win at trial, and Sandifer responded, "No, no. Not that. Not at all, Your Honor." Id. at 29. Sandifer explained that he just wanted "more time to like set my matter over so I can work with my new attorney . . . so I can look into

my case and see where I want to go with it and what's, you know what I am saying, the best interest." Id.

During the guilty plea hearing, the trial court thoroughly examined Sandifer to ensure that he had entered into the plea agreement knowingly and voluntarily. Both at the guilty plea hearing and again at sentencing, Sandifer admitted to the factual basis supporting the plea. Sandifer could not articulate a good reason for withdrawing his guilty plea. In essence, Sandifer was requesting more time to consult with his attorney about his case. Regardless, Sandifer has not demonstrated on these facts that a manifest injustice resulted by the court's rejection of his motion to withdraw his guilty plea. The trial court did not abuse its discretion when it rejected his motion.

Affirmed.

BAKER, C.J., and MATHIAS, J., concur.