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2011 IL App (3d) 100326-U

Order filed December 19, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF  
ILLINOIS,

Plaintiff-Appellee,

v.

LINDA HOLLINS,

Defendant-Appellant.

) Appeal from the Circuit Court  
) of the 10th Judicial Circuit,  
) Peoria County, Illinois,  
)  
) Appeal No. 3–10–0326  
) Circuit No. 08–CF–1018  
)  
) Honorable  
) Michael E. Brandt,  
) Judge, Presiding.

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JUSTICE O'BRIEN delivered the judgment of the court.  
Justices Holdridge and Wright concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Trial court's denial of a defendant's motion to withdraw her guilty plea to a charge of drug-induced homicide was not an abuse of discretion because even if defense counsel's suggestion that day-for-day good conduct credit was a possibility, the defendant was informed that the applicable law required her to serve 75% of her sentence. Also, where the defendant did not allege innocence or a trial defense, she could not show any prejudice caused by her counsel's advice regarding good conduct credits.

¶ 2 The defendant pled guilty to drug-induced homicide (720 ILCS 5/9-3.3(a) (West 2008)) and was sentenced to 13 years in prison. After she was sentenced, and was informed that she

would have to serve at least 75% of her sentence due to the applicable good conduct provision, the defendant filed a motion to withdraw her guilty plea. The trial court denied the motion, and the defendant appealed, arguing that her plea was involuntary due to ineffective assistance of counsel.

¶ 3

### FACTS

¶ 4 The defendant was charged by information with one count of drug-induced homicide (720 ILCS 5/9-3.3(a) (West 2008)) and two counts of unlawful delivery of a controlled substance (720 ILCS 570/401 (West 2008)). The defendant entered a partially negotiated plea of guilty to the drug-induced homicide charge in exchange for a sentencing cap of 15 years. Drug-induced homicide, a class X felony, carried a sentencing range of 6 to 30 years.

¶ 5 At the plea hearing, defense counsel indicated that the parties disagreed as to which good conduct provision was applicable to the defendant, and he asked the trial court for clarification of the applicable provision. Defense counsel believed that the defendant was entitled to day-for-day credit, but the State believed that the defendant had to serve 75% of her sentence. The trial court noted that good conduct provisions were not part of its admonishments, and it refused to give an advisory opinion on the subject of good conduct credits. Later, when admonishing the defendant, the trial court asked the defendant if she understood that the plea agreement had nothing to do with good conduct credits. The defendant answered yes. The plea was entered, and the defendant was sentenced to 13 years in prison. When pronouncing sentence, the trial court stated that truth-in-sentencing applied, requiring that the defendant serve 75% of her sentence.

¶ 6 The defendant filed a motion to reduce her sentence or to withdraw her plea, arguing that

her sentence was excessive and that the plea proceedings were not conducted in compliance with Illinois Supreme Court Rule 402 (eff. July 1, 1997). Defense counsel was allowed to withdraw, and new counsel was appointed. New counsel filed a supplemental motion to withdraw the guilty plea. This motion alleged that defense counsel was ineffective for failing to advise the defendant prior to the time she entered the plea that she was ineligible for day-for-day good conduct credit for drug-induced homicide under the Truth-in-Sentencing Act (730 ILCS 5/3-6-3(a)(v) (West 2008)). The defendant's new counsel alleged that, due to this lack of knowledge, the defendant's plea was not knowing, intelligent, and voluntary.

¶ 7 At the hearing on the motion to withdraw the plea, the defendant testified that defense counsel had informed her that she would have to serve 75% of her sentence, but that she could come back in and ask the trial court to apply day-for-day good conduct credit. She testified that, but for the possibility of day-for-day credit, she would not have entered the plea. She admitted that defense counsel informed her that the applicable early release provision mandated that she serve 75% of her sentence, and that defense counsel did not promise that she could get day-for-day credit, only that she could ask for it. Defense counsel testified that he and the State both initially believed that the defendant was eligible for day-for-day good conduct credit. However, prior to the plea proceeding, the State indicated that the defendant would have to serve 75% of her sentence. The trial court declined to express an opinion on the subject. Defense counsel testified that he was hopeful for a day-for-day sentence, but there was a risk of a 75% sentence, and he relayed that to the defendant. He advised the defendant that the trial court would make that decision, but he still recommended the plea. The trial court reviewed the plea proceedings, and found that the defendant was properly admonished and not misadvised

regarding truth-in-sentencing. The defendant appealed.

¶ 8

#### ANALYSIS

¶ 9 The defendant argues that her guilty plea was involuntary because it was based upon defense counsel's incorrect representation that her sentence could be eligible for day-for-day good time credit. The defendant contends that but for the possibility of day-for-day credit, she would have entered the plea. The State argues that the defendant's plea was voluntary because, when she pled guilty, the defendant knew that she could be required to serve 75% of her sentence and she acknowledged that the plea agreement had nothing to do with good time credits.

¶ 10 A defendant does not have an absolute right to withdraw a guilty plea. *People v. Edmonson*, 408 Ill. App. 3d 880 (2011). The defendant bears the burden of showing a manifest injustice under the facts to obtain leave to withdraw his plea. *Edmonson*, 408 Ill. App. 3d at 884. The decision to grant or deny a motion to withdraw a guilty plea rests in the sound discretion of the trial court, and we review the decision for an abuse of discretion. *People v. Delvillar*, 235 Ill. 2d 507 (2009).

¶ 11 Challenges to guilty pleas that allege ineffective assistance of counsel are subject to the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Huante*, 143 Ill.2d 61 (1991), *superseded on other grounds by statute as stated in People v. Delvillar*, 383 Ill. App. 3d 80 (2008). To show that she was deprived of the effective assistance of counsel, a defendant must show both that her attorney's performance was deficient and that the defendant suffered prejudice as a result. *Strickland*, 466 U.S. at 687. An attorney's performance is deficient if it falls below an objective standard of reasonableness. *Strickland*, 466 U.S. at 693.

¶ 12 The Illinois Supreme Court has recognized that the impact of counsel's advice on a defendant's plea may depend on whether the advice concerned a direct or collateral consequence of the defendant's sentence. *People v. Stewart*, 381 Ill. App. 3d 200 (2008). Good conduct credits are a collateral consequence. *Stewart*, 381 Ill. App. 3d at 204. In the realm of collateral consequences, the Illinois Supreme Court has further drawn a distinction between a passive failure to advise and active misinformation. *People v. Correa*, 108 Ill. 2d 541 (1985) (misinformation); *People v. Huante*, 143 Ill. 2d 61 (1991) (failure to advise). If a defense counsel gives incorrect or wrong advice, even as to a collateral consequence of the plea, and the defendant relies on that advice in making the decision to plead guilty, the counsel's performance falls below an objective standard of reasonableness. *Correa*, 108 Ill. 2d at 552. Conversely, defense counsel's failure to advise of a collateral consequence is not deficient performance. *Huante*, 143 Ill. 2d at 72.

¶ 13 In this case, defense counsel informed the defendant that she might be eligible for day-for-day good conduct credit, a collateral consequence of the defendant's plea. Although defense counsel equivocated, telling the defendant that he was not sure which good conduct provision was applicable, the defendant testified that defense counsel told her that even if she was eligible for the 75% standard, she could come back to court and request day-for-day. The defendant testified that the possibility of day-for-day good conduct was what led her to plead guilty. However, the defendant also admitted that defense counsel told her that the applicable law required her to serve 75% of her sentence, and he did not promise that she would be successful in asking the trial court for day-for-day credit. Also, during the plea colloquy, the defendant agreed that the plea agreement had nothing to do with good conduct credit. We find

that there was no legal basis for defense counsel to inform the defendant that there was any possibility of day-for-day good conduct credit. A defendant convicted of drug-induced homicide is not eligible for day-for-day good conduct credit and can receive no more than 7.5 good conduct days for each month of her sentence of imprisonment. 730 ILCS 5/3-6-3(a)(2)(v) (West 2008).

¶ 14 However, even assuming that counsel's performance was deficient, to prevail on her claim that her guilty plea was not voluntary due to ineffective assistance of counsel, the defendant must also show prejudice. To establish prejudice, the defendant must show a reasonable probability that but for the error, she would not have pleaded guilty. *People v. Rissley*, 206 Ill. 2d 403 (2003). It is not enough to simply allege that but for counsel's deficient advice the defendant would not have pleaded guilty and have gone to trial. *Rissley*, 206 Ill. 2d at 458. The defendant's claim must be accompanied by a claim of innocence or the articulation of a plausible defense. *Rissley*, 206 Ill. 2d at 459-60.

¶ 15 The defendant stated that the only reason that she thought that day-for-day good conduct was a possibility was because of the representation by defense counsel. She also stated that, had it not been for that possibility, she would not have entered the plea. However, she did not allege that she was innocent, nor that she had some defense to present at trial. In addition, defense counsel testified that he recommended the plea no matter which good conduct provision applied. Even if we find that defense counsel's suggestion that there was a possibility of day-for-day credit was deficient performance, the defendant has not shown any prejudice. Thus, we conclude that the trial court did not abuse its discretion by denying the defendant's motion to withdraw her guilty plea.

¶ 16

CONCLUSION

¶ 17 The judgment of the circuit court of Peoria County is affirmed.

¶ 18 Affirmed.