

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2011 IL App (4th) 100053-U

Filed 11/29/11

NO. 4-10-0053

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

| | | |
|--------------------------------------|---|--------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from |
| Plaintiff-Appellee, |) | Circuit Court of |
| v. |) | McLean County |
| JACKIE ROBINSON KELLY, |) | No. 08CF197 |
| Defendant-Appellant. |) | |
| |) | Honorable |
| |) | Robert L. Freitag, |
| |) | Judge Presiding. |

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Steigmann and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in denying defendant's motion to withdraw his guilty plea.

¶ 2 In October 2008, Jackie Kelly pleaded guilty to the unlawful delivery of a controlled substance in violation of 720 ILCS 570/401(d)(i) (West 2008). The plea agreement called for the State to dismiss other charges and the State and defendant agreed on fines, sentencing credits, and credit against his fines. Defendant was not eligible for probation. There was no agreement as to the length of the sentence, but the parties agreed the sentence would be concurrent with a sentence to be imposed in another case as the result of a probation violation. In December 2008, the State recommended a sentence of 12 years, the defendant asked for a sentence of 5 years, and the trial court sentenced defendant to an extended term of 9 years in the Illinois Department of Corrections. Defendant later filed a motion and amended motion to

withdraw his plea, and the court appointed a public defender who elected not to modify defendant's amended motion.

¶ 3 After an evidentiary hearing, the trial court denied the motion to withdraw the guilty plea. Defendant appeals, contending his trial counsel promised a sentence of five years, and the court abused its discretion in denying his motion to withdraw his guilty plea. We affirm.

¶ 4 I. BACKGROUND

¶ 5 Defendant was originally indicted on two counts of unlawful delivery of a controlled substance, and two counts of unlawful delivery of a controlled substance within 1,000 feet of a church. In exchange for his plea to one count, the other charges were dismissed.

¶ 6 The State and defendant essentially agree defendant was properly admonished as to his rights, the consequences of his plea, possible sentences, and mandatory supervised release. Defendant also indicated no promises had been made other than those in the agreement, nor was he subject to any force or threats to get him to plead guilty. Defendant stated he understood the possible sentences and still intended to plead guilty. There is no dispute about the factual basis for the plea, nor are there any alleged deficiencies in the procedures followed by the trial court at the plea and sentencing hearings.

¶ 7 Defendant's amended motion to withdraw his guilty plea referenced trial counsel's failure to investigate the case, the existence of an alibi, and counsel's failure to file motions to suppress. The motion also alleged defendant's plea was not knowing and voluntary because of trial counsel's misrepresentation of "the collateral consequences" of his extended-term sentence.

¶ 8 At a December 2009 hearing on the motion, defendant testified that trial counsel did not inform him of the potential sentences and guaranteed he would receive a five-year

sentence. Defendant also testified he was not certain whether his counsel said "he was going to get me five years or guarantee me five years. One or the other, I can't tell exactly."

¶ 9 Defendant testified he did not understand what the court told him about the sentences because of what counsel told him about a five-year sentence; counsel did not explain any of the "papers" associated with the plea; and while he signed the plea agreement, he did not read it because he did not have his glasses.

¶ 10 Dorita Reed, an acquaintance of defendant, testified she heard counsel tell defendant "that he will only allow him five years and he would talk to the judge about it". She also testified that "[h]e said if he pleaded out for five years, I mean if he make[s] a plea agreement that he will only seek five years."

¶ 11 Dora Whiteside, also an acquaintance of defendant, testified she heard counsel say, "[i]f he pleaded guilty, that he would promise him only five years."

¶ 12 The State called Jonathon Wright, trial counsel for defendant. Wright testified he told defendant "...we would leave it up to the Judge and it would be up to the Judge to decide the penalty." Wright denied he promised or guaranteed a five-year sentence. While he was not able to recall some specifics he was firm in stating he never promised, guaranteed, or suggested a five- year sentence.

¶ 13 The trial court, after considering the evidence and the record, concluded there were no grounds to suggest defendant's plea was not knowingly, voluntarily, and intelligently made. The court denied the motion to withdraw the guilty plea.

¶ 14 **II. ANALYSIS**

¶ 15 Defendant contends he was promised a five-year sentence by trial counsel, and his

plea was involuntary because it was based on that promise. The State contends defendant was fully admonished and the record belies his claims of a promise or guarantee. A trial court's decision on defendant's motion to withdraw his guilty plea will not be disturbed on appeal absent an abuse of discretion. *People v. Manning*, 227 Ill. 2d 403, 411-12, 883 N.E.2d 492, 498 (2008).

¶ 16 The record shows the trial court thoroughly and properly admonished defendant on all aspects of his guilty plea and its consequences. It also appears defendant understood the proceedings and the admonishments. The record is in stark contrast to defendant's claims. Defendant never mentioned the five-year guarantee during the plea hearing. Defendant did not mention the five-year guarantee when he spoke in allocution. After he received the nine-year sentence, he informed the court he had no questions. His motion and amended motion to withdraw his guilty plea makes no reference to a promise or a guarantee.

¶ 17 At the hearing on the motion to withdraw his guilty plea, defendant's testimony was not clear and definite; Reed's testimony was at best ambiguous; and Whiteside's testimony was brief but did indicate Wright made the five-year promise. Wright testified candidly he could not remember specific questions defendant had or specifically what he told defendant but he was definite he made no promise or guarantee.

¶ 18 The trial court considered the credibility of the witnesses, and the entire record in concluding there was no promise or guarantee, and defendant did not plead guilty in reliance on such a promise. It was not an abuse of discretion for the court to deny the defendant's motion to withdraw his guilty plea.

¶ 19 III. CONCLUSION

¶ 20 We affirm. As part of our judgment, we grant the State its statutory assessment of

\$50 against defendant as costs of this appeal.

¶ 21 Affirmed.