

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).

NO. 4-10-0722

Order Filed 3/16/11

IN THE APPELLATE COURT
OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
RICHARD B. MARTINEZ,)	No. 03CF1093
Defendant-Appellant.)	
)	Honorable
)	Charles McRae
)	Leonhard,
)	Judge Presiding.

JUSTICE McCULLOUGH delivered the judgment of the court.
Justices Turner and Appleton concurred in the judgment.

ORDER

Held: The trial court did not abuse its discretion by denying defendant's motion to withdraw his guilty plea, or in the alternative, motion to reconsider his sentence.

Defendant, Richard B. Martinez, appeals the trial court's denial of his motion to withdraw his guilty plea or, in the alternative, motion to reconsider his sentence. He appeals *pro se*, arguing the court erred by finding it unlikely that he would have prevailed had his case gone to trial. We affirm.

On October 6, 2003, defendant entered open guilty pleas to disarming a peace officer (720 ILCS 5/31-1(a) (West 2002)) and residential burglary (720 ILCS 5/19-3 (West 2002)). On January 23, 2004, the trial court sentenced him to consecutive prison terms of 7 years for disarming a peace officer and 15 years for residential burglary. On January 30, 2004, defendant filed a

motion to reconsider his sentence or for a new sentencing hearing. On March 19, 2004, the court denied the motion. On direct appeal, this court affirmed the trial court's judgment. *People v. Martinez*, No. 4-04-0248 (2005) (unpublished order under Supreme Court Rule 23). In our order, we summarized the State's factual basis for defendant's guilty pleas as follows:

"The State's factual basis showed that on June 20, 2003, Champaign County Deputy Sheriff John Reifsteck received a call regarding a man sleeping in a truck. Deputy Reifsteck went to the truck and when he attempted to talk to defendant, defendant exited the truck and ran. Deputy Reifsteck caught defendant and a struggle ensued that resulted in defendant escaping with deputy Reifsteck's gun.

A witness later saw defendant enter a residence without permission, take a set of car keys from inside the residence, and attempt to open a vehicle parked outside the residence. The police later located defendant riding in the passenger seat of a vehicle driven by his roommate. When the officers ordered the vehicle occupants to raise

their hands, defendant attempted to accelerate the vehicle, and the officers fired at defendant. The gunfire struck defendant, and he suffered permanent injuries." *Martinez*, No. 4-04-0248 (2005) (unpublished order under Supreme Court Rule 23).

On January 13, 2006, defendant filed a *pro se* postconviction petition. Counsel was appointed to represent him and, on November 1, 2006, he filed a second amended postconviction petition with the aid of counsel. Defendant alleged ineffective assistance of his trial counsel for failing to have meaningful conversations with him about the case, misrepresenting the State's plea offer, and failing to file a motion to withdraw his guilty pleas. On April 28, 2008, the trial court determined defendant sustained his burden of establishing ineffective assistance of counsel and granted his postconviction petition. The court determined the appropriate remedy was to allow defendant the opportunity to file a motion to withdraw his guilty pleas.

On May 27, 2008, defendant filed a motion to withdraw his guilty plea, or in the alternative, motion to reconsider his sentence. He alleged his guilty pleas were involuntary, unknowing, and unintelligently given. Specifically, defendant asserted that because of the serious injuries he sustained during the

incident that resulted in the charges against him, he was unable to remember much about the circumstances of the incident. He also alleged he could not focus clearly or process information during his plea and sentencing proceedings due to serious pain he was experiencing and a lack of physical or emotional stamina. Defendant argued his trial counsel was ineffective for failing to consider the impact of his physical and emotional condition on his ability to understand, process, and analyze information.

Defendant further asserted his trial counsel denied his requests to view discovery materials. He alleged that, as a result, he was unaware that fingerprint analysis was inconclusive, blood evidence was not tested, and an eye witness description did not match his physical characteristics. Defendant maintained that, had he known and understood such information at the time of his plea, he would have insisted on a jury trial. Finally, he argued the trial court erred by imposing consecutive, rather than concurrent, sentences.

On August 26, 2008, the trial court conducted a hearing on the matter. Defendant testified that he was in bad shape both physically and mentally at the time he entered his plea. In June 2003, during the incident that resulted in his arrest for the charged offenses, he received a gunshot wound that caused serious injury to his lower jaw. Defendant was hospitalized for close to a month and his medical treatment included insertion of a feeding

tube into his stomach and a tracheotomy. At the time of his October 2003 plea, the feeding tube was still in place. Once in jail, defendant received ibuprofen and Tylenol for his pain.

Defendant remembered three occasions that his defense counsel, Walter Ding, visited him in jail prior to his plea. He recalled that they discussed the charges against him and the potential penalties he could face, including up to 22 years in prison. Defendant stated he informed Ding that he did not remember much about the incident that led to his arrest because of the amount of alcohol he had been drinking and the injuries to his head. In particular, he did not remember a residential burglary taking place and requested to see the discovery in his case. Despite making several requests, defendant asserted he was not allowed to view any discovery prior to pleading guilty. Further, defendant described Ding as providing only vague answers to his questions.

Defendant testified Ding informed him that evidence in his case included an eye witness, fingerprints taken from the crime scene, and blood samples. Although Ding never told him that such evidence "matched [him] a hundred percent," defendant found that conclusion was implied. Specifically, defendant stated as follows:

"No. Mr. Ding never -- Mr. Ding. never
said any of the samples specifically matched

me in any way, that the witness described me in any way, but he implied it by the way he said it. *** The way it was phrased I took -- it implied it to me that it meant that this material matched me, that he looked at it and he had seen it matched it [sic], and that in his professional opinion it was good evidence against me."

During his appeal in approximately June 2004, defendant was able to read the discovery materials in his case. He testified he learned that the State's eye witness gave a description of the perpetrator that he believed was inconsistent with his physical characteristics. Defendant asserted the witness described the perpetrator as a male who was 5 feet 10 or 11 inches tall, weighing 190 to 200 pounds; however, defendant was 5 feet 7 inches tall and weighed 170 pounds. He also learned from the discovery materials that testing was never performed on blood samples and he could not be conclusively matched to the fingerprint evidence. Defendant asserted he would not have pleaded guilty had he been aware of that information.

Defendant testified, at the time he entered his guilty plea, he was able to give his undivided attention to the court but was unable to focus due to pain and the trauma of everything he had been through. He stated he could not concentrate and was

sleep-deprived due to pain he was experiencing. Defendant remembered the trial court's questioning and admonishments during the plea hearing, including whether he was being medicated, whether he understood the proceedings and the plea agreement, and whether he was being forced to enter his plea. He asserted the judge "admonished [him] as to *** all of the rights that [the judge] was supposed to admonish [him] to."

At the State's request, the trial court took judicial notice of transcripts from defendant's plea hearing and the hearing on his postconviction petition. During the plea hearing, the court provided lengthy admonishments to defendant. Defendant asserted he understood the charges against him and potential penalties, his rights, the rights he would give up by pleading guilty, and his plea agreement with the State. Defendant indicated he was entering his plea voluntarily, denied having any questions, and repeatedly asserted his understanding of the plea proceedings.

Defendant's testimony at the hearing on his postconviction petition was substantially similar to the testimony he provided at the hearing on his motion to withdraw. He recalled his discussions with Ding about the plea agreement and the evidence against him and noted his inability to review discovery materials. Upon questioning by the State, defendant acknowledged that, at the time he pleaded guilty, he understood

the sentencing range he was facing and that he was not being promised or guaranteed a specific sentence.

At defendant's postconviction hearing, Ding testified and recalled meeting with defendant approximately four times to discuss the case. Ding had no concerns about defendant's ability to understand the terms of his plea. He also testified that defendant appeared to understand the trial court's admonishments during the plea hearing.

With respect to the residential-burglary charge, Ding noted discovery showed the existence of an eye witness who provided a general description of defendant. He stated he permitted defendant to read discovery materials in his presence at the jail. Ding believed, given the existence of the eye witness and events that happened before the residential burglary, the State could have made a strong argument that defendant engaged in "a course of one single crime involving the disarming of a police officer and then an attempt to flee or get away by getting keys and trying to access a vehicle." Ding did not believe the absence of blood or fingerprint evidence established a defense for defendant because of the surrounding circumstances in the case. He stated there was strong evidence against defendant with respect to charge of disarming a police officer.

At the hearing on defendant's motion to withdraw, Ding further testified that he recalled being asked about blood tests

and fingerprint evidence by defendant. He stated he told defendant that the fingerprint evidence was inconclusive and the blood evidence had not been tested.

Following the presentation of evidence and the parties' arguments, the court took the matter under advisement. On May 30, 2010, it entered a written order, denying defendant's motion to withdraw his guilty pleas or reconsider his sentences.

This appeal followed.

Defendant appeals *pro se*, arguing the trial court erred by denying his motion to withdraw his guilty pleas or reconsider his sentence. He asserts only a challenge to his residential burglary conviction. Defendant asserts the State's evidence against him was insufficient and he would have prevailed had the matter gone to trial.

The trial court has discretion when determining whether to grant or deny a defendant's motion to withdraw his guilty plea and its decision will be reviewed for an abuse of that discretion. *People v. Delvillar*, 235 Ill. 2d 507, 519, 922 N.E.2d 330, 338 (2009). "An abuse of discretion will be found only where the court's ruling is arbitrary, fanciful, unreasonable, or no reasonable person would take the view adopted by the trial court." *Delvillar*, 235 Ill. 2d at 519-20, 922 N.E.2d at 338.

There is no automatic right to withdraw a guilty plea and a defendant "must show a manifest injustice under the facts

involved." *Delvillar*, 235 Ill. 2d at 520, 922 N.E.2d at 338.

"The decision of the trial court will not be disturbed unless the plea was entered through a misapprehension of the facts or of the law, or if there is doubt as to the guilt of the accused and justice would be better served by conducting a trial." *Delvillar*, 235 Ill. 2d at 520, 922 N.E.2d at 338. "In the context of a motion to withdraw a guilty plea, '[t]he misapprehension of law or fact goes to the question of whether the plea was voluntarily and intelligently made.' [Citation.]" *People v. Harris*, 392 Ill. App. 3d 503, 508, 912 N.E.2d 696, 701 (2009). The defendant has the burden of showing a misapprehension of fact or law. *Delvillar*, 235 Ill. 2d at 520, 922 N.E.2d at 338.

Additionally, a defendant's plea is not knowingly and voluntarily made where he lacks effective representation. *People v. Manning*, 227 Ill. 2d 403, 412, 883 N.E.2d 492, 499 (2008). To establish ineffective assistance of counsel during guilty plea proceedings, a defendant must show both that his counsel's performance was deficient and that he suffered prejudice as a result of that deficient performance. *Manning*, 227 Ill. 2d at 412, 883 N.E.2d at 499.

In his motion to withdraw, defendant claimed that his plea was not intelligently or voluntarily entered into due to a weakened mental or physical condition. However, that claim was not supported by the record. The record shows defendant's

participation at his guilty plea hearing and that he gave appropriate responses to the court's questioning. At both the hearing on his postconviction petition and the hearing on his motion to withdraw his guilty plea, defendant recalled details about plea proceedings, including his discussions with counsel and questioning by the court. Defendant's testimony showed he was able to voice his concerns with defense counsel, make requests of his counsel, and make reasoned decisions with respect to his case. Additionally, the record reflects he was aware of and understood the charges against him, potential sentences, and the terms of his plea agreement with the State. The trial court did not abuse its discretion by finding this claim to be unsubstantiated.

Defendant further complained that he was not permitted to view discovery and was misled by Ding with respect to the State's evidence against him. He contends that had he been aware fingerprint evidence was inconclusive, blood evidence was not tested, and the eye witness's description did not match his physical characteristics he would have insisted on a jury trial and likely prevailed at trial. We also reject these claims.

As the trial court pointed out, it was within Ding's discretion as to whether to provide a defendant with discovery materials. See *People v. Davison*, 292 Ill. App. 3d 981, 989, 686 N.E.2d 1231, 1236 (1997). Moreover, Ding contradicted defendant's claim that he was not permitted to view discovery and that

he was unaware fingerprint and blood evidence had not been linked to him. Specifically, Ding testified that he allowed defendant to review discovery materials during one of their visits. He also asserted that he informed defendant that the fingerprint evidence was inconclusive and the blood evidence had not been tested.

Even assuming Ding's performance as defendant's counsel was deficient, defendant failed to show the outcome of his case would have likely been different had he proceeded to trial. On appeal, defendant readily admits that he is not challenging his guilty plea to disarming a peace officer. The record suggests the State had overwhelming evidence of his guilt as to that offense. As stated by the trial court, evidence related to the residential-burglary charge was compelling. In its factual basis the State alleged an eye witness identified defendant as the perpetrator of the offense. That eye witness made an in-court identification of defendant as the perpetrator at sentencing. Also, the residential burglary can be linked closely in time and in proximity to the events over which defendant does not dispute involvement, the disarming of a peace officer and flight from police. Neither minor discrepancies in the initial general description provided by the eye witness nor the lack of blood or fingerprint evidence linking defendant to the crime is sufficient to show that defendant would likely have prevailed had his case

gone to trial.

The record shows defendant's guilty pleas were knowingly and voluntarily entered into. The trial court did not abuse its discretion by denying his motion to withdraw.

For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we grant the State's request that defendant be assessed \$50 as costs for this appeal.

Affirmed.