

No. 1-10-3362

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	Nos. 08 CR 22216
)	08 CR 22217
)	
STEVEN SINGLETON,)	Honorable
)	Matthew E. Coghlan
Defendant-Appellant.)	Judge Presiding.

JUSTICE PALMER delivered the judgment of the court.
Presiding Justice Gordon and Justice Garcia concurred in the judgment.

ORDER

- ¶ 1 *Held:* Circuit court did not abuse its discretion in denying defendant's motion to withdraw his guilty pleas; defendant was not denied his right to counsel where counsel complied with Rule 604(d); judgment affirmed.
- ¶ 2 Defendant Steven Singleton appeals from an order of the circuit court of Cook County denying his motion to withdraw his pleas of guilty to two counts of burglary. He maintains that his pleas were not knowing and voluntary because he was not properly admonished about the length of his potential sentences. Defendant also maintains that he was denied the right to counsel at the hearing on his motion to vacate his guilty pleas where counsel failed to comply

with Supreme Court Rule 604(d) (eff. July 1, 2006) by not amending his petition and, instead, choosing to withdraw, thereby forcing defendant to proceed *pro se*.

¶ 3 The record shows that after a consolidated bench trial on March 30, 2010, defendant was found guilty in four unrelated violation of order protection (VOOP) cases (08 CR 22640-43). On May 27, 2010, the day he was to be sentenced on these convictions, defendant requested an offer on the two instant burglary cases (08 CR 22216-17), and a conference pursuant to Illinois Supreme Court Rule 402 (Ill. S. Ct. R. 402 (eff. July 1, 1997)). After the conference, defendant's privately retained counsel stated that:

"It's our understanding that the sentence on those two burglary cases will be concurrent with whatever your Honor deems appropriate on the charges that my client has already been convicted of and will be no more -- will be no more greater sentence than whatever your Honor feels is appropriate for my client concerning the crimes already been convicted [VOOP cases]."

¶ 4 The court responded, "[t]hat's correct," then asked defendant if that was his understanding of what would happen if he pled guilty in the burglary cases. Defendant responded, "[y]es." The court then asked defendant if he understood that he could be sentenced on the two burglary cases to a term of "3 to 7 years" imprisonment, and defendant responded, "[y]es."

¶ 5 The State presented a factual basis for the burglary pleas, which the court found sufficient before accepting defendant's pleas to these charges. The court then sentenced defendant on the separate VOOP cases to consecutive prison terms of 1 year, 18 months', 2 years' and 30 months' imprisonment, for a total of 7 years' imprisonment. Following that, the court sentenced defendant to concurrent prison terms of seven years on the two burglary cases, and ordered them to run concurrently with the VOOP cases. The court admonished defendant of his appeal rights, which defendant indicated he understood. When the court asked defendant if he had any questions, he responded that he "agree[d] with the sentence," but "beg[ged]" the court to give him

five years. The court responded, "[n]o, the sentence is 7 years."

¶ 6 On June 23, 2010, the court addressed defendant's motion to reconsider the sentences imposed on the VOOP cases. After the court denied the motion, counsel informed the court that defendant asked him to file a motion to withdraw his guilty pleas and, based on various attorney-client conversations with defendant, counsel felt that he could not file the motion in good faith. Defense counsel also filed a motion to withdraw as counsel and stated his belief that he may be called to testify on the motion to withdraw the plea.

¶ 7 Defendant then filed a *pro se* motion to withdraw his guilty pleas. He alleged that the seven-year sentence imposed on his burglary cases violated his pre-plea agreement of three years' imprisonment. He maintained that defense counsel told him that he would receive three years' imprisonment on both burglary charges to run concurrently with the VOOP cases and requested that his pleas be withdrawn and his cause remanded for a jury trial.

¶ 8 The court responded that defendant's sentences in the burglary cases were concurrent, and defendant stated,

"No, I meant the four phone calls, four telephone harassment calls, I thought they was going to run concurrently themselves, like found guilty on all four counts all concurrently."

¶ 9 The court asked defendant what this had to do with his pleas of guilty on the burglary cases, and defendant responded that he thought everything was going to run concurrent, the VOOP and the burglary cases. The court informed defendant that he was tried in the VOOP cases and did not agree to a sentence, but went to trial knowing the penalty range. Defendant then indicated that he "had a misunderstanding about that" and thought the sentences would run concurrently. The court explained that since he was tried in the VOOP cases, it did not matter, and that the burglary cases were separate and part of an agreement.

¶ 10 Defendant then indicated that the legal basis for his motion to vacate in the burglary cases

was, per the Rule 402 conference, that "if I pled guilty on the burglary charges, I would be sentenced between probation and three years[' imprisonment]." The court responded, "[n]o, that's not what you were told before you pled." The court said that defendant was told on the record that he would be sentenced between three and seven years' imprisonment, and that he would not get more on the burglary charges than he "got altogether on the [VOOP] cases." The court, however, granted defendant leave to file his motion to vacate the pleas of guilty to the two burglary charges and counsel leave to withdraw. The court then appointed new counsel for defendant on the motion to vacate.

¶ 11 The matter was continued several times, and on October 20, 2010, defendant filed a *pro se* amended motion to withdraw his guilty plea. He alleged that he told his trial counsel that he would plead guilty to the two burglary charges if given the minimum prison sentence of three years and to participate in a Rule 402 conference to see if the court would agree to this. Defendant alleged that if the judge did not agree with this sentence, his counsel was to demand a speedy trial.

¶ 12 In its response to defendant's motion to withdraw his guilty pleas, the State alleged that the trial court admonished defendant that he was facing three to seven years' imprisonment on the burglary cases and that, following a Rule 402 conference, defendant agreed to enter an open plea to them. The State noted that defendant's former private counsel denied representing to defendant that he would receive a sentencing range of probation to three years' imprisonment on the burglary cases. The State also alleged, *inter alia*, that defendant's misapprehensions were not justified, that he simply sought to withdraw his pleas because he received a sentence different from the one he hoped to get, and that the trial court advised defendant of the sentencing range, which he indicated that he understood.

¶ 13 On the same date, defendant's appointed counsel filed a combined motion to withdraw as attorney and to allow defendant to proceed *pro se*. In his motion, counsel stated that when he

was appointed to represent defendant, the cause was continued so that he could make any amendments he deemed necessary to defendant's *pro se* motion. He also stated that he had read the transcripts and that nowhere in the record does defendant state that he believed the sentence for the two burglary cases would be other than between three to seven years' imprisonment. He further stated that he discussed the allegations with defendant and informed him there is nothing in the record to support his contention that he was informed that his sentence on the two burglary cases would be three years' imprisonment. Counsel maintained that he had not found any other grounds that would give rise to a motion to withdraw the guilty plea and requested leave to withdraw and that defendant be allowed to proceed *pro se*.

¶ 14 At the hearing on this motion, defense counsel noted that he had included all the elements of a Rule 604(d) certificate in his motion to withdraw as counsel, and that the only difference was that he did not "see" any issues. Defendant told the court that counsel did not have his best interests in mind, and that he had filed a *pro se* amended motion to withdraw his guilty pleas. He further informed the court that he had no problem with his counsel withdrawing, that he could not afford private counsel at that point, and that he could represent himself.

¶ 15 The court granted counsel's motion to withdraw, found that counsel complied with his duties under Rule 604(d) and invited defendant to argue his motion. Defendant asserted, *inter alia*, that his thinking was that there was one trial, so the sentences in the VOOP cases should run concurrent, and thus, on the burglary cases, he was "thinking mentally [that the trial court was] going to give [him] a number of three years." The State noted that defendant had begged for five years after receiving a prison term of seven years. Defendant responded that he meant to say three years, and that he was emotional at the time.

¶ 16 The court was not persuaded and denied defendant's motion. In doing so, the court noted that the results of the Rule 402 conference were confirmed on the record, and defendant indicated that he understood the sentencing range of three to seven years' imprisonment. Defendant now

appeals from that ruling.

¶ 17 He first contends that the trial court erred in refusing to allow him to withdraw his guilty pleas because he was not properly admonished of the length of his potential sentences, thereby rendering his plea unknowing and involuntary. Defendant's claim is based on the sentencing range available on the burglary counts, which the trial court informed him would not exceed the sentences he would receive in his VOOP cases, and his belief that the VOOP sentences would run concurrently instead of consecutively.

¶ 18 The decision to grant or deny a motion to withdraw a guilty plea is reviewed for an abuse of discretion. *People v. Delvillar*, 235 Ill. 2d 507, 519 (2009). An abuse of discretion will be found where the court's decision is arbitrary, fanciful, unreasonable or no reasonable person would take the view adopted by the trial court. *Delivillar*, 235 Ill. 2d at 519-20. As relevant to this case, the trial court's decision will not be disturbed unless the plea was entered through a misapprehension of the facts or law or if there is doubt as to the guilt of the accused and justice would be better served by conducting a trial; however, where, as here, the defendant has claimed a misapprehension of the facts or law, the misapprehension must be shown by the defendant. *Delvillar*, 235 Ill. 2d at 520.

¶ 19 In this case, defendant essentially complains about his alleged lack of knowledge that the sentences in his VOOP cases could run consecutively. We note that this court has affirmed in a consolidated appeal the judgments entered on the VOOP cases. *People v. Singleton*, 2012 IL App (1st) 102019-U. In doing so, this court rejected defendant's claims that the trial court abused its discretion in admitting evidence of other crimes and in imposing consecutive sentences despite the existence of certain mitigating evidence. *Singleton*, ¶¶ 29-31. Although the VOOP cases were not part of the plea agreement here, and the sentences imposed there are not properly before this court, defendant has premised his motion to withdraw on the court's failure to admonish him that consecutive terms could be imposed in those cases and his understanding that

the maximum sentence would be no more than three years' imprisonment, which would be consistent with concurrent sentencing.

¶ 20 Leave to withdraw a guilty plea should be granted when it appears that the plea was entered on a mistaken apprehension of the facts or law; however, in the absence of substantial objective proof that a defendant's subjective mistaken impression was reasonably justified, the defendant's subjective impressions are insufficient grounds on which to vacate a guilty plea. *People v. Dougherty*, 394 Ill. App. 3d 134, 140 (2009). The burden is on the defendant to establish that the circumstances existing at the time of the plea, judged by objective standards, justified the mistaken impression. *People v. Artale*, 244 Ill. App. 3d 469, 475 (1993). Defendant has not made that showing in this case.

¶ 21 The record clearly shows that defendant entered an open plea to two counts of burglary and was admonished of the three to seven year sentencing range that applied to them. He was also advised that this sentence would be no more than that imposed on the VOOP cases and would run concurrently with them. Defendant indicated his understanding of this admonishment, and after the court imposed a seven-year sentence, defendant stated that he "agree[d] with the sentence" but begged for five years. Defendant's alleged belief that the maximum sentence for the burglary cases would be no more than three years' imprisonment is refuted by the objective record which shows that defendant was admonished that the sentencing range was "3 to 7 years" imprisonment, an admonition he indicated he understood. Defendant's claim that he believed he would be sentenced to no more than three years is belied by his request for a five-year sentence. Additionally, any misapprehension that may have existed was certainly not induced by the State, counsel or the court. *People v. Gasper*, 167 Ill. App. 3d 218, 221 (1988). Defendant therefore failed to provide objective proof that his mistaken impression was reasonably justified. Accordingly, we find no abuse of discretion by the court in denying defendant's motion to withdraw his guilty pleas. *Dougherty*, 394 Ill. App. 3d at 140.

¶ 22 Defendant next contends that he was "denied his right to counsel at his guilty plea proceeding where counsel did not comply with [Rule] 604(d)" and, instead, chose to withdraw, thereby forcing him to proceed *pro se*. He further maintains that counsel failed to comply with Rule 604(d) where "he did not 'make the necessary amendment to the motion necessary for adequate presentation of'" defendant's claim that his plea was not knowing and voluntary based on his being told that the burglary sentences would not be more than his VOOP sentences, which, he believed, was no more than three years. Defendant claims counsel also failed to advocate for an evidentiary hearing.

¶ 23 A defendant is entitled to counsel at every critical stage of any trial proceeding, and this right attaches when the defendant files a motion to withdraw his guilty plea. *People v. Young*, 355 Ill. App. 3d 317, 324 (2005). Rule 604(d) safeguards this right and provides that the trial court shall determine if the defendant is represented by counsel and, if the defendant is indigent and *desires* counsel, the trial court shall appoint counsel. Thus, when a defendant files a *pro se* motion to withdraw the guilty plea, the court must ascertain whether the defendant desires counsel and may not presume that the defendant has waived his right to counsel. *Young*, 355 Ill. App. 3d at 324.

¶ 24 Here, the record shows that after defendant filed a *pro se* motion to withdraw his guilty plea on June 23, 2010, the court allowed his private counsel to withdraw and appointed counsel to assist him on that motion. On October 20, 2010, defendant filed another *pro se* motion to withdraw his guilty plea and informed the court that appointed counsel did not have his best interests in mind. Defendant also informed the court that he had no problem with his counsel withdrawing, and that he could represent himself. Through these actions, defendant clearly indicated his desire to proceed *pro se* and was not denied the assistance of counsel. *People v. McCarter*, 385 Ill. App. 3d 919, 938-39 (2008). Having done so, defendant bears the risks inherent in that decision (*McCarter*, 385 Ill. App. 3d at 938) and should be precluded from

raising such course of conduct as error on appeal (*People v. Abston*, 263 Ill. App. 3d 665, 671 (1994)).

¶ 25 Notwithstanding, defendant further claims that appointed counsel failed to comply with the requirements of Rule 604(d) when he filed a motion to withdraw without filing an amended motion where there was an issue of merit. The State maintains that under these circumstances, counsel was not required to file a Rule 604(d) certificate and properly requested leave to withdraw where the issue defendant wanted to raise had no foundation and was thus without merit.

¶ 26 Rule 604(d) provides that counsel shall file a certificate with the circuit court stating that he has consulted with defendant in person to ascertain his contentions of error in the entry of the guilty plea, has examined the trial court file and report of proceedings of the guilty plea and has made any amendments to the motion necessary for adequate presentation of any defects in the plea proceedings. Ill. S. Ct. R. 604(d) (eff. July 1, 2006); *People v. DeRosa*, 396 Ill. App. 3d 769, 774 (2009). In a similar manner, Rule 651(c) (eff. Dec. 1, 1984) requires a showing on the record that counsel has performed the comparable duties in a postconviction setting. The supreme court has recognized, however, that postconviction counsel is not required to advance frivolous claims on the defendant's behalf and may withdraw from representation provided that counsel makes sure to explain why the defendant's claims were frivolous and patently without merit. *People v. Greer*, 212 Ill. 2d 192, 205, 211-12 (2004).

¶ 27 In the case at bar, our *de novo* review (*People v. Grice*, 371 Ill. App. 3d 813 (2007)), shows that counsel complied with the requirements of the rule. In his motion to withdraw, counsel stated that he consulted with defendant and reviewed the transcript but found nothing in the record to support defendant's contentions or other grounds for relief. Accordingly, he requested leave to withdraw, setting forth the bases for his conclusion and request.

¶ 28 Defendant claims, however, that counsel was required to amend his motion to vacate and

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seek an evidentiary hearing. Counsel found no amendments to make, given the record of the plea proceedings, and under the reasoning set forth in *Greer*, 212 Ill. 2d at 208-10, was not barred from requesting to withdraw. Here, counsel performed the duties required of him under Rule 604(d), determined that the claim defendant sought to raise was without merit, as we have concluded, and thus was not required to amend the petition.

¶ 29 In light of the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 30 Affirmed.