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2012 IL App (4th) 110009-U

Filed 4/10/12

NO. 4-11-0009

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
MARCUS L. WATSON,)	No. 09CF1916
Defendant-Appellant.)	
)	Honorable
)	Heidi N. Ladd,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Turner and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion by denying defendant's motion to withdraw his guilty plea, considering that he failed to carry his burden of establishing that he pleaded guilty under a misapprehension of law or fact that was reasonably justified.

¶ 2 Defendant, Marcus L. Watson, appeals from the trial court's denial of his motion to withdraw his plea of guilty to a single count of residential burglary (720 ILCS 5/19-3 (West 2008)). He claims he pleaded guilty on the erroneous assumption that he was eligible for participation in the impact-incarceration program, also known as "boot camp."

¶ 3 Actually, this assumption was not erroneous. It appears that, under statutory law, defendant was indeed eligible to participate in the impact-incarceration program. Before he pleaded guilty, however, he was warned, both orally and in writing, that for a nonexhaustive list of other reasons, the Illinois Department of Corrections (DOC) could choose to decline his application for

impact incarceration. As it turned out, DOC declined his application because he had a juvenile adjudication that required him to register as a sex offender. Defendant received fair warning of that possible outcome. Therefore, we find no abuse of discretion in the trial court's denial of his motion to withdraw his guilty plea, and we affirm the trial court's judgment.

¶ 4

I. BACKGROUND

¶ 5

A. The Guilty-Plea Hearing

¶ 6

In the guilty-plea hearing on December 15, 2009, the trial court asked the prosecutor if there had been any plea negotiations. The prosecutor replied that, in return for defendant's plea of guilty to the single count of residential burglary and his promise to pay all fines, costs, and fees mandated by statutory law, defendant would receive eight years' imprisonment. In addition to the eight-year prison term, the State made two more promises. First, the State "[would] not object to a request for consideration for inclusion in the impact incarceration program at DOC" if defendant chose to make such a request. Second, the State would refrain from filing "any additional charges against the defendant for conduct described in Urbana Police Department report 09-5985."

¶ 7

The trial court asked defense counsel if those were the terms of the plea agreement as he understood it. Defense counsel answered yes but added that defendant also was "seeking a recommendation for impact incarceration." See 730 ILCS 5/5-8-1.1(b)(8) (West 2008) (one of the eligibility criteria for impact incarceration is that "[t]he person was recommended and approved for the impact incarceration program in the court's sentencing order").

¶ 8

After confirming with defendant personally that the terms recited by the prosecutor and defense counsel accurately reflected his understanding of the plea agreement, the trial court warned him that its favorable recommendation to DOC would not assure his admittance into the

impact-incarceration program. The court told him:

"THE COURT: Sir, I will recommend you for participation in that program but I can't promise you you would get in that program. That would be up to the Department of Corrections whether or not they want to accept you into the program. Did you understand that?

DEFENDANT: Yes, Your Honor."

¶ 9 B. The Consent To Participate in Impact Incarceration

¶ 10 Before asking defendant to confirm that he wished to plead guilty to residential burglary and before accepting his guilty plea, the trial court noted, for the record, that defendant had signed a consent to participate in the impact-incarceration program. See 730 ILCS 5/5-8-1.1(b)(7) (West 2008) (one of the eligibility criteria is that "[t]he person has consented in writing to participation in the impact incarceration program and to the terms and conditions thereof"). The "Consent to Participate in the Impact Incarceration Program," filed on December 15, 2009, begins with a certification by defendant that he meets the eligibility criteria for the program. Then, in the next paragraph, defendant acknowledges that DOC may consider "other matters" and that his acceptance into the program is not guaranteed. The document reads in part as follows:

"First, I meet the eligibility requirements for impact incarceration which include:

(1) I am not less than 17 years of age nor more than 35 years of age.

(2) I have not previously participated in the

impact incarceration program and have not previously served more than one prior sentence of imprisonment for a felony in an adult correctional facility.

(3) I have not been convicted of a Class X felony, first or second degree murder, armed violence, aggravated kidnapping, criminal sexual assault, aggravated criminal sexual abuse or a subsequent conviction for criminal sexual abuse, forcible detention, residential arson, place of worship arson, or arson and have not been convicted previously of any of those offenses.

(4) I have or will be sentenced to a term of imprisonment of 8 years or less.

(5) I am physically able to participate in strenuous physical activities or labor.

(6) I do not have any mental disorder or disability that would prevent participation in the impact incarceration program.

(7) I am freely, voluntarily and intelligently consenting in writing to participation in the impact incarceration program and to the terms and conditions thereof.

Second, I understand that the Court finding me eligible for impact incarceration is not a guarantee into the program and final acceptance rests with IDOC [(Illinois Department of Corrections)]. They may also consider, among other matters, whether I have any outstanding detainers or warrants, whether I have a history of escaping/absconding, whether my participation may pose a risk to the safety or security of any person and whether space is available."

Thus, the list of "other matters" is nonexhaustive ("among other matters"). In addition to outstanding warrants, a history of escaping, and so forth, DOC may consider "other matters," which are unspecified.

¶ 11 C. The Impact-Incarceration Sentencing Order

¶ 12 On December 15, 2009, at the same time the trial court sentenced defendant to eight years' imprisonment, it entered an "Impact Incarceration Sentencing Order" finding that he "may meet the eligibility requirements of the Department of Corrections for impact incarceration" and approving him for placement in the program. The order provided that if DOC accepted him into the program and subsequently determined he had successfully completed the program, the sentence would be reduced to time served in the program. See 20 Ill. Adm. Code 460.80(a) (2012) ("A committed person shall be deemed to have successfully completed the program upon completion of 120 active days of participation in the program and any extended time required to be served in the program as provided in this Part."); 20 Ill. Adm. Code 460.80(c) (2012) ("Upon successful completion of the program, the committed person shall serve a term of mandatory supervised release."). If, on the other hand, DOC declined to accept him into the program or if DOC accepted

him but he did not successfully complete the program, he would have to serve the eight-year prison term.

¶ 13 D. The Motion To Withdraw the Guilty Plea

¶ 14 On January 13, 2010, defendant filed a motion to withdraw his guilty plea and to vacate the sentence. In support of his motion, he alleged that DOC had turned him down for the impact-incarceration program because he was required to register as a sex offender. The motion stated:

"2. The Illinois Department of Corrections determined Defendant was not eligible for impact incarceration because he is required to register as a sex offender.

3. Defendant was unaware at the time of the plea that he was not eligible for impact incarceration according to Illinois Department of Corrections' policy."

In other words, defendant claimed he had pleaded guilty under an erroneous assumption that he was eligible for impact incarceration. Defendant alleged that, in reality, he was ineligible for impact incarceration because, unbeknownst to him when he pleaded guilty, DOC had a policy of rejecting all applicants who were required to register as sex offenders.

¶ 15 E. Documentation That DOC Produced
in Obedience to Subpoenas *Duces Tecum*

¶ 16 The hearing on defendant's motion to withdraw his guilty plea originally was scheduled for July 26, 2010, and on July 1, 2010, defense counsel obtained the issuance of subpoenas *duces tecum* commanding DOC to bring to the hearing all documentation pertaining to its denial of

defendant's request for impact incarceration and all documentation stating the eligibility criteria for admission into the program, including "documentation that states [DOC's] policy to deny the impact incarceration request of inmates who must register as sex offenders."

¶ 17 DOC sent the requested documentation to the trial court under a cover letter dated July 22, 2010, with courtesy copies to the prosecutor and the defense counsel. This documentation from DOC, which is in the record, nowhere mentions a blanket policy of disqualifying persons who have to register as sex offenders; at least, we have found no such reference. See Ill. S. Ct. R. 341(h)(6) (eff. July 1, 2008) ("Statement of Facts, which shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal ***.") A "Transfer Coordinator's Office Clinical Manual" states, however: "No sex related convictions approved. Sex arrests may be approved." In an application form, under the heading "Subjective Data," defendant "[a]dmits to being charged or accused of Sexual Assault/Sexual Abuse Stating 'AGGRAVATED CRIMINAL SEXUAL ASSAULT IN 2005.'" An "Initial Classification Report" pertaining to defendant says: "DENY SEX OFFENDER[.] REGISTRY REQUIRED."

¶ 18 F. The Hearing on Defendant's Motion To Withdraw His Guilty Plea

¶ 19 On December 29, 2010, the trial court held a hearing on defendant's motion to withdraw his guilty plea. In the hearing, defense counsel requested the court to take judicial notice of the documents subpoenaed from DOC. The prosecutor had no objection, and the court did so. No further evidence was presented, and the parties proceeded to arguments.

¶ 20 Defense counsel argued that DOC had "added an additional factor to determine whether someone [was] eligible for impact incarceration": "[a]ccording to DOC policy[,] no one

with a sex-related conviction [could] be approved for impact incarceration." Defendant had "a juvenile conviction that require[d] him to register as a sex offender," and defendant "did not know, nor could he have known, that he would be ineligible for impact incarceration due to that conviction." It followed that defendant's guilty plea "was not a knowing plea," defense counsel argued, because "[h]e went into that plea of guilty believing he had a chance of being approved for impact incarceration when in reality he had no chance whatsoever."

¶ 21 The prosecutor argued, on the other hand, that, contrary to defense counsel's characterization, defendant actually had no "prior sex conviction," because "a juvenile adjudication as a sex offender" was not a "conviction." Thus, according to the prosecutor, the DOC policy to which defense counsel referred was inapplicable, and instead of rejecting defendant pursuant to that policy, DOC rejected him in the exercise of its discretion. The trial court had warned defendant that DOC could choose, in its discretion, to reject his application for impact incarceration.

¶ 22 The trial court agreed that, in both the "Consent To Participate" and in the court's admonitions in the guilty-plea hearing, defendant had received notice that his admission into the impact-incarceration program was not guaranteed. He "knew that for whatever reason the Department of Corrections might not accept him into the program." Inasmuch as he assumed his registration as a sex offender would make no difference, that assumption was objectively unreasonable, considering that he had been warned that DOC could consider other, unspecified matters. Consequently, the court denied defendant's motion to withdraw his guilty plea.

¶ 23 This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 Defendant contends that he pleaded guilty under the mistaken impression that he was

eligible for the impact-incarceration program, whereas, in reality, he was ineligible for the program (so he says) because he was required to register as a sex offender.

¶ 26 A defendant may seek permission to withdraw a guilty plea on the ground that he or she pleaded guilty under a misapprehension of fact or law. *People v. Spriggle*, 358 Ill. App. 3d 447, 450-51 (2005). Because eligibility for participation in the impact-incarceration program is controlled by law, specifically, section 5-8-1.1(b) of the Unified Code of Corrections (730 ILCS 5/5-8-1.1(b) (West 2008)), a misapprehension as to one's eligibility for impact incarceration would be a misapprehension of law.

¶ 27 Actually, defendant had no misapprehension of law, because he was eligible to participate in impact incarceration. He met the eligibility criteria in section 5-8-1.1(b). That section provides as follows:

"In order to be eligible to participate in the impact incarceration program, the committed person shall meet all of the following requirements:

(1) The person must be not less than 17 years of age nor more than 35 years of age.

(2) The person has not previously participated in the impact incarceration program and has not previously served more than one prior sentence of imprisonment for a felony in an adult correctional facility.

(3) The person has not been convicted of a

Class X felony, first or second degree murder, armed violence, aggravated kidnapping, criminal sexual assault, aggravated criminal sexual abuse or a subsequent conviction for criminal sexual abuse, forcible detention, residential arson, place of worship arson, or arson and has not been convicted previously of any of those offenses.

(4) The person has been sentenced to a term of imprisonment of 8 years or less.

(5) The person must be physically able to participate in strenuous physical activities or labor.

(6) The person must not have any mental disorder or disability that would prevent participation in the impact incarceration program.

(7) The person has consented in writing to participation in the impact incarceration program and to the terms and conditions thereof.

(8) The person was recommended and approved for placement in the impact incarceration program in the court's sentencing order." 730 ILCS 5/5-8-1.1(b) (West 2008).

Respondent does not suggest that he failed to meet any of those eight eligibility

criteria (which, in any event, with some additions and variations that need not concern us here, were clearly listed in the "Consent To Participate," which he signed before pleading guilty). It is true that, in a juvenile case, a court adjudged him guilty of a sex offense, but that juvenile adjudication was not a "conviction" (see *People v. Taylor*, 221 Ill. 2d 157, 168 (2006)), and the third eligibility criterion speaks of being "convicted" of criminal sexual assault, not of being adjudged guilty of that offense in a juvenile proceeding. So, inasmuch as defendant assumed he was eligible for impact incarceration, he was not laboring under a misapprehension of law; he was indeed eligible.

¶28 As the "Consent To Participate" made clear, however, just because an applicant meets the eligibility criteria for the impact-incarceration program, it does not necessarily follow that DOC will admit the applicant into the program. Section 5-8-1.1(b) gives DOC the discretion to "consider *** other matters." 730 ILCS 5/5-8-1.1(b) (West 2008). After listing the eight eligibility criteria, the statute says: "The Department may *also* consider, *among other matters*, whether the committed person has any outstanding detainers or warrants, whether the committed person has a history of escaping or absconding, whether participation in the impact incarceration program may pose a risk to the safety or security of any person and whether space is available." (Emphases added.) *Id.* The "Consent To Participate" recited this passage almost *verbatim*, immediately after reciting the eligibility criteria. Therefore, inasmuch as defendant assumed that registration as a sex offender would pose no obstacle to his admission into the impact-incarceration program, that assumption was not " "reasonably justified." " *People v. Harris*, 392 Ill. App. 3d 503, 508 (2009). Before pleading guilty, defendant signed the "Consent To Participate," and he was on notice, from that document, that DOC could consider "other matters." Having to register as a sex offender falls within the category of "other matters." Consequently, we find no abuse of discretion in the denial of

defendant's motion to withdraw his guilty plea. See *id.* at 509.

¶ 29

III. CONCLUSION

¶ 30 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs.

¶ 31 Affirmed.