

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).

2013 IL App (4th) 110502-U  
NO. 4-11-0502  
IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

FILED  
February 25, 2013  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Livingston County
JON CANADA,	)	No. 09CF249
Defendant-Appellant.	)	
	)	Honorable
	)	Jennifer H. Bauknecht,
	)	Judge Presiding.

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PRESIDING JUSTICE STEIGMANN delivered the judgment of the court.  
Justices Pope and Knecht concurred in the judgment.

**ORDER**

- ¶ 1     *Held:* The appellate court affirmed, concluding that (1) the trial court did not err by denying defendant's motion to withdraw his guilty plea and (2) defendant's stand-in counsel was not ineffective for failing to request a continuance at defendant's plea hearing.
- ¶ 2     At a September 2010 hearing, defendant, Jon Canada, entered a plea of guilty to aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 2010)), a Class 2 felony (three to seven years in prison (730 ILCS 5/5-4.5-35 (West 2010))). In exchange, the State offered to recommend a three-year minimum sentence. Before accepting defendant's guilty plea, the trial court asked defendant several meaningful questions in compliance with Illinois Supreme Court Rule 402(a) (eff. July 1, 1997) to ensure that defendant's plea was being entered knowingly and voluntarily. Confident that defendant's plea was knowing and voluntary, the court accepted defendant's plea and sentenced him to three years in prison.

¶ 3 In November 2010, defendant *pro se* filed a petition to withdraw his guilty plea on the grounds that his counsel was ineffective for forcing him to accept the plea agreement. In response, the trial court appointed counsel to pursue defendant's claims, and in March 2011, counsel filed an amended motion to withdraw defendant's guilty plea. Following a hearing at which defendant and his trial counsel testified, the court denied defendant's motion, finding, in part, as follows: "there is no evidence whatsoever to suggest that there were any threats, any coercion or anything that would have made this plea anything but a knowing and voluntary admission and plea[.]"

¶ 4 Defendant appeals, arguing that (1) the trial court erred by denying his motion to withdraw guilty plea and, alternatively, (2) his stand-in counsel was ineffective for failing to request a continuance when defendant expressed reservations about pleading guilty. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 In September 2009, the State charged defendant—who was 32 years old—with aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 2010)) in that he "touched with his hand (over the bra)" of a 14-year-old's breast for the purpose of sexual gratification. Shortly thereafter, the trial court appointed counsel to represent defendant. On June 7, 2010, attorney Mark Johnson entered his appearance as privately retained counsel to represent defendant. (Defendant's court-appointed counsel simultaneously withdrew.) Three days later, Johnson, on defendant's behalf, filed a motion to suppress defendant's videotaped confession. Johnson later withdrew that motion at a July 2010 hearing, stating as follows: "Based upon my view of the video, the research, the law as it applies to the facts, \*\*\* there is no hope of prevailing on that

motion."

¶ 7 In August 2010, defendant signed a jury waiver. In September 2010, defendant entered into a fully negotiated guilty plea, in which he agreed to plead guilty to aggravated criminal sexual abuse, a Class 2 felony punishable by three to seven years in prison, in exchange for the State's promise to recommend the minimum sentence of three years in prison.

¶ 8 A. Defendant's September 2010 Plea Hearing and Sentence

¶ 9 At defendant's September 2010 plea hearing, defendant appeared with attorney James Waller, Johnson's associate. The trial court explained to defendant the terms of his plea, as well as the consequences. Defendant agreed that he understood those terms and consequences. The court thereafter asked defendant whether he had been promised anything other than the specific terms of the plea agreement, and the following colloquy ensued:

"THE COURT: [I]f there are concerns, now is the time to address those concerns.

THE DEFENDANT: Your Honor, the concerns in truth are irrelevant in this case. I can't get my truth heard, and I can't get anybody to hear me and get my witnesses called.

THE COURT: Well, I don't understand what you are telling me but—

THE DEFENDANT: Your Honor, yes.

THE COURT: Well, I'm accepting a plea of guilty to a very serious charge. You are giving up a number of rights that you have in connection with that charge. If you are going to plead

guilty and you have reservations about that, I need to address them now. I cannot address them later.

So if you believe you are not guilty, then we've got to talk about that. If you think you were promised something in connection with this plea agreement, I need to know that; but \*\*\* I'm not sure who you are referring to as Childress; but assuming it's Detective Childress who maybe investigated this—I don't even know. I know I had a hearing. I think we dealt with that in connection with the motion to suppress.

So in regards to the plea itself today, is anybody forcing you to plead guilty to the charge?

THE DEFENDANT: American justice system, Your Honor, but I plead guilty.

THE COURT: How do you think the American justice system is causing you to plead guilty?"

¶ 10 Defendant thereafter had a discussion with Waller, which, according to the record, was "outside the hearing of others." Defendant then responded as follows:

"THE DEFENDANT: Just, we'll just drop it, Your Honor.

THE COURT: All right. I'm going to ask you again. Is anybody forcing you—

THE DEFENDANT: No, Your Honor. No.

THE COURT: Has anybody promised you anything other

than the terms of the plea agreement if you plead guilty today?

THE DEFENDANT: No.

THE COURT: Have you had a full opportunity to discuss this decision with your attorney?

THE DEFENDANT: Yes.

THE COURT: Knowing the charge you are pleading guilty to, the rights that you are waiving, the penalties you are facing, do you still wish to go forward and plead guilty?

THE DEFENDANT: Yes."

¶ 11 The State then offered a factual basis, explaining that defendant, who was 32 years old at the time, knowingly touched his neighbor, a 14-year-old girl, on her breast for the purpose of sexual gratification. Defendant stipulated that the State could prove its factual basis and specifically pleaded guilty to the aggravated-criminal-sexual-abuse charge.

¶ 12 The trial court thereafter sentenced defendant to three years in prison.

¶ 13 B. Defendant's November 2010 Motion To Withdraw Plea  
and the Hearing on That Motion

¶ 14 In November 2010, defendant *pro se* filed a motion to withdraw guilty plea, claiming that he had been provided ineffective assistance of counsel. In response, the trial court appointed counsel to assist defendant in pursuing his claim in that regard. In March 2011, defendant filed an amended motion to withdraw guilty plea, asserting that he was coerced into pleading guilty because his counsel led him to believe that he did not have a viable defense.

¶ 15 In May and June 2011, the trial court conducted a two-day hearing on defendant's motion to withdraw guilty plea. Defendant testified that he retained Johnson and told him certain

facts that would demonstrate that the victim was lying. Defendant complained that the motion to suppress that Johnson filed on his behalf did not contain any of the facts and issues that they had discussed. Johnson was not responsive to his calls and did not communicate to him the trial strategy. On August 11, 2010, defendant met with Johnson to discuss trial strategy, including defendant's desire to recant his confession, at which point defendant informed Johnson about his 2001 felony burglary conviction in Pennsylvania. Johnson expressed concern about the trial strategy due to defendant's prior conviction. Two hours later, Johnson met with defendant and explained to him that he had secured a plea deal for three years in prison but Johnson said he would continue to formulate a strategy for the bench trial.

¶ 16 Defendant further testified that the next contact that he had with counsel was on August 16, 2010, the date set for trial. Defendant said that Waller met with him and explained that the trial judge wanted to enter the plea that day. Defendant testified that he thought Waller would be requesting a bench trial. Waller responded that he was not familiar with the case but advised defendant to sign a jury waiver to "buy a little more time." The court thereafter scheduled the September 29, 2010, plea hearing, but defendant thought that Johnson was planning to devise a new trial strategy in the meantime.

¶ 17 Defendant explained that he made "three or four" attempts to contact Johnson's office between August 16 and September 29, 2010, to express his concern about his case and that he wanted to pursue a bench trial, but he was unable to reach Johnson. Defendant said that he met Waller in the courthouse hallway on September 29, 2010, and Waller told defendant about the plea offer. Defendant initially declined the offer, but Waller told him that if he did not take the deal, Johnson would have to terminate his representation. Defendant said he then accepted

the deal because he thought he had no choice. Defendant added that when he expressed to the trial court his displeasure, Waller told him off the record that "if [you] continue this then they could possibly give you more time."

¶ 18 Johnson testified that he first met with defendant in April 2010, two months prior to being retained. Between April 7, 2010, and June 7, 2010, he had multiple conversations with defendant by telephone and in person. He worked with the prosecutor to arrange a continuance from the initial trial date, which the trial court granted. Johnson filed a motion to suppress based upon defendant's assertions that his confession had been coerced. After reviewing the videotape and reports, however, he "saw no indication whatsoever that there was in any way, shape, or form any coercion." He subsequently withdrew that motion.

¶ 19 On the Friday before trial, Johnson told defendant that he intended to put defendant on the witness stand to explain away his confession. For the first time, defendant informed Johnson that he had a prior felony conviction and had served six years in the Pennsylvania Department of Corrections. Defendant knew that the State was not aware of that conviction. Defendant told Johnson that he would deny having the prior felony if the issue came up. Johnson told defendant that he could not represent him if he intended to do that because Johnson could not suborn perjury.

¶ 20 Johnson thereafter pursued settlement negotiations and was able to convince the State to reduce its original offer from four years to three years. Johnson concluded that if defendant was convicted, he would likely face at least six years in prison because of his previous conviction. He explained this to defendant and thought that they were "on the same page" as to waiving the jury trial and setting the case over for a fully negotiated plea.

¶ 21 Johnson added that throughout his representation of defendant, defendant's friends and relatives constantly called his office; it was "very difficult to communicate and control the entire situation." (Waller did not testify at the hearing.)

¶ 22 On this evidence, the trial court denied defendant's motion to withdraw, noting first that it specifically recalled the facts of this case and recalled "step[ping] outside the box" of its normal questioning and admonishments to ensure that defendant knew "exactly what [he] want[ed] to do." The court then added the following findings:

"The bottom line in the Court's mind [is that] you made a decision. You agreed to accept a plea of three years. You had at least six weeks to think about that between August 16th and September 29th. On the day the plea was taken, I gave you every opportunity to say ["]wait a second["].

For you to suggest that you didn't have anything else to do is completely contrary to what is in the transcript. You want to change your mind now after the fact; and there is no evidence whatsoever to suggest that there were any threats, any coercion or anything that would have made this plea anything but a knowing and voluntary admission and plea on your part."

¶ 23 This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 Defendant argues that (1) the trial court erred by denying his motion to withdraw his guilty plea and, alternatively, (2) his stand-in counsel was ineffective for failing to request a



¶ 30

*2. Defendant's Motion in This Case*

¶ 31 In this case, defendant argued in his motion to withdraw guilty plea, and now posits on appeal, that (1) his plea was entered under a misapprehension of the facts and law—namely, that he did not know that he could demand a trial and (2) doubt existed as to his guilt, given that he believed the victim was trying to frame him. Our review of the record reveals that both positions are utterly meritless.

¶ 32 First, we reject defendant's claim that he did not know that he could demand a jury trial. Here, the record shows that the trial court admonished defendant regarding all of the direct consequences of his plea of guilty, including the fact that he was relinquishing his right to trial in accordance with Rule 402(a). Defendant acknowledged that he understood his rights and persisted in his desire to plead guilty. Like the trial court, we view as unpersuasive defendant's self-serving, after-the-fact claim that he was unaware that he could demand a trial. Moreover, in light of defendant's confession and his stipulation to the State's offer of proof, we have no doubt that defendant committed the aggravated criminal sexual abuse in this case and, thus, justice likewise does not require reversal. In short, we find no "manifest injustice" in this case. Accordingly, we conclude that the trial court did not abused its discretion when it denied defendant's motion to withdraw guilty plea.

¶ 33 **B. Defendant's Claim That He Was Provided Ineffective Assistance of Counsel at His Plea Hearing**

¶ 34 Alternatively, defendant contends that he was provided ineffective assistance of counsel at his plea hearing. Specifically, defendant asserts that his stand-in counsel, Waller, was ineffective for failing to request a continuance when defendant expressed reservations about pleading guilty, given that Waller was "unfamiliar with the details of the case and had never

discussed with [him] the merits of [his] case." We disagree.

¶ 35 Ineffective-assistance-of-counsel claims are governed by the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Cathey*, 2012 IL 111746, ¶ 23, 965 N.E.2d 1109. "To prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that counsel's performance was deficient and that the deficient performance prejudiced the defendant." *Id.* An attorney provides ineffective representation when the attorney fails to ensure that the defendant's guilty plea is entered voluntarily and intelligently. *People v. Hall*, 217 Ill. 2d 324, 335, 841 N.E.2d 913, 920 (2005).

¶ 36 Here, we have already determined that defendant's plea was entered knowingly and voluntarily. Accordingly, we need not further analyze defendant's claims related to Waller's performance. See *People v. Tyus*, 2011 IL App (4th) 100168, ¶ 82, 960 N.E.2d 624 (when the court concludes that a defendant has not been prejudiced, it need not address the reasonableness of counsel's performance).

¶ 37 III. CONCLUSION

¶ 38 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State \$50 against defendant as costs for this appeal.

¶ 39 Affirmed.