2015 IL App (1st) 133182-U

FIFTH DIVISION
November 6, 2015

No. 1-13-3182

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.	)	No. 08 CR 8340
	)	
NATHANIEL TUCKER,	)	Honorable
	)	Maura Slattery-Boyle,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE PALMER delivered the judgment of the court.
Presiding Justice Reyes and Justice Lampkin concurred in the judgment.

O R D E R

¶ 1 *Held*: Denial of defendant's motion to withdraw his guilty plea affirmed over his claim of a meritorious defense and assertion that the ends of justice would be better served by submitting the case to trial.

¶ 2 Defendant Nathanial Tucker entered a negotiated plea of guilty to a charge of first-degree murder and was sentenced to 25 years' imprisonment. On appeal, defendant contends that the trial court abused its discretion in denying his motion to withdraw his guilty plea because he presented a defense that was worthy of consideration and the ends of justice would be better served by submitting the case to trial.

¶ 3 The record shows that defendant was charged by indictment with the April 5, 2008, first-degree murder of Albert Vaughn Jr. In his initial answer to the State's request for discovery, defendant indicated that he would assert the affirmative defense of self-defense, and listed Baron Ellington as a potential witness. On October 27, 2010, defendant filed an amended answer, stating that he would also raise the affirmative defense of defense of others, and listed Andre Hill as a potential witness to be called on his behalf. On September 28, 2010, defendant rejected the State's plea bargain offer of 28 years' imprisonment.

¶ 4 On November 16, 2010, the State filed a motion to present evidence of other crimes. The State attached to the motion an unsigned letter purportedly written by defendant to Vaughn's brother during defendant's pretrial incarceration. In the letter, the author stated that he did not try to kill Vaughn and that he did not "think lil homie (Vaughn) would die." The author also stated that he was aware that Vaughn's family filed a lawsuit against the police department and that he would help them, and that someone named "Jeff" would give the family $7000, half before trial and half after trial, in return for their favorable testimony. The author then told Vaughn's family to testify that Vaughn swung first while the police stood around and let everything happen, that he would testify in a similar fashion, and they would place "all the blame on the police." The State also sought to introduce recordings of phone calls defendant had made during his pretrial incarceration to "Jeff," in which they discussed how defendant could present his testimony to ensure a good outcome.

¶ 5 On May 25, 2011, the trial court granted the State's motion and stated that the phone calls and letter would be admissible at trial. The State subsequently submitted the letter along with handwriting samples from defendant to an Illinois State Police Crime Lab Investigator, Jennifer Banning, but Banning was unable to conclusively determine whether defendant was the author.

On May 4, 2012, the trial court denied defendant's motion to preclude testimony regarding the letter, and a week later partially granted defendant's motion to reduce bond, by reducing it from $1.5 million to $1.1 million.

¶ 6 On May 29, 2012, defendant entered into a plea agreement with the State whereby he would plead guilty to the first-degree murder of Vaughn in exchange for the State's recommendation of 25 years' imprisonment. The trial court admonished defendant regarding the minimum and maximum sentences it could impose, and the rights he was waiving by pleading guilty. The trial court confirmed that no one had forced or coerced him into pleading guilty and that he was doing so freely and voluntarily. During these admonishments, the court twice asked defendant how he wished to plead, and defendant replied "guilty."

¶ 7 The State then provided the factual basis for the plea stating that the evidence at trial would show that at 11 p.m. on April 5, 2008, the police were called to a battery in progress at 7039 South Throop Street in Chicago, Illinois, where they saw two crowds yelling at each other. Several witnesses observed defendant approach Vaughn and hit him in the head with a baseball bat. Vaughn fell to the ground and defendant hit him in the head with the bat again. The officers chased defendant into a house at 7058 South Throop Street, recovered the bat which he had discarded, and arrested him as he was attempting to hide in a closet. Further evidence would show that Doctor John Ralston of the Cook County Medical Examiner's Office performed a post-mortem examination on the victim, and that it was his opinion that Vaughn died of "cerebral injuries due to blunt force trauma to the head," and that the manner of death was homicide. He would also opine that within a reasonable degree of scientific certainty, the victim's injuries were consistent with being hit in the head by a baseball bat.

¶ 8 Defendant stipulated to these facts and the court accepted his plea, finding that he understood the nature of the charge, the consequences of his plea, and that there was a factual basis for it. The State then read victim impact statements from Vaughn's family and outlined defendant's prior convictions. The court sentenced defendant to 25 years' imprisonment followed by three years of mandatory supervised release, and admonished him of his appeal rights.

¶ 9 On June 27, 2012, defendant filed a motion, through counsel, to vacate his guilty plea. He also filed a separate, *pro se*, motion to vacate his plea, explaining that he had retained private counsel. Private counsel then filed a series of amended motions, culminating in a second amended motion to withdraw defendant's guilty plea, in which any claims of ineffective assistance of counsel that were present in previous versions of the motion were removed.

¶ 10 In the second amended motion, defendant asserted that he should be allowed to withdraw his guilty plea because he had a defense worthy of consideration, and, thus, the ends of justice would be better served by submitting the case to trial. In support of his motion, defendant attached two affidavits, one from himself and one from Andre Hill.

¶ 11 In his affidavit, Hill asserted that on April 4, 2008, he and defendant were hanging out on South Throop Street when he heard that someone had been jumped at 7054 South Throop Street. He and defendant went to the area where police had arrived and saw Baron Ellington "bleeding and lying in the middle of the street." Hill saw Vaughn and his "friend/associate" armed with boards with nails protruding from them. The police ordered Vaughn and the other person to drop the boards, but they refused to do so. Vaughn then "cocked" his board back and swung at Hill, but missed, and as he was getting ready to swing the board again, defendant "acted quickly to prevent [Hill] from being killed or injured."

¶ 12 In his affidavit, defendant recounted the same series of events as Hill, and asserted that when he intervened, he did so to keep Hill or himself "from getting killed or severely injured," and thus acted in self-defense of Hill and himself. He further stated that he did not want to plead guilty, but did so because "the public defender made it sound as though [he] would spend the rest of [his] life in prison if [he] did not make a deal."

¶ 13 In denying defendant's motion to withdraw his plea, the court concluded that its admonitions were thorough and proper, and that "Hill is, in no way, new information." The court also stated that defendant's claim of self-defense is not a new claim of innocence or something that is newly discoverable, and that Hill's affidavit does not present a colorable claim of self-defense or a persuasive argument for why the plea should be vacated. The court further noted that defendant twice stated that he wished to plead guilty, and that the court's admonitions regarding the rights he was waiving were clear. The court concluded that "there is no actual claim of innocence, that the self-defense is nothing new, that the admonishments were clear, that justice has been served."

¶ 14 In this appeal from that judgment, defendant contends that the trial court erred in denying his motion to withdraw his plea because he has a meritorious defense and the ends of justice will be better served by submitting the case to trial. The State responds that the trial court did not err in denying his motion to withdraw because all of the information cited in his motion was available to defendant before he entered his plea.

¶ 15 A defendant has no absolute right to withdraw a guilty plea, and the decision whether to allow him to do so is within the sound discretion of the trial court. *People v. Kokoraleis*, 193 Ill. App. 3d 684, 691 (1990). A motion to withdraw a plea may be granted where the plea was entered on a misapprehension of the facts or law, there is doubt as to defendant's guilt, defendant

has a meritorious defense, or the ends of justice will be better served by submitting the case to trial. *People v. Dougherty*, 394 Ill. App. 3d 134, 140 (2009), citing *People v. Davis*, 145 Ill. 2d 240, 244 (1991). Defendant bears the burden of demonstrating that withdrawal is necessary to correct a manifest injustice based on the facts of the case (*Kokoraleis*, 193 Ill. App. 3d at 694, citing *People v. Bovinett*, 73 Ill. App. 3d 833, 835 (1979)), and a trial court's denial of defendant's motion to withdraw his guilty plea will not be disturbed on appeal absent an abuse of discretion (*Dougherty*, 394 Ill. App. 3d at 140).

¶ 16 Defendant first contends that he should be allowed to withdraw his guilty plea because his claim of self-defense is meritorious. He maintains that the affidavits attached to his petition state a claim worthy of the trial court's consideration. The record shows, however, that defendant was aware of a potential self-defense claim from the beginning of the case. In fact, defendant identified both Hill and Ellington as potential witnesses in his answers to the State's request for discovery, and indicated that he would raise the affirmative defenses of self-defense and defense of others. The record thus shows that at the time he entered his plea, defendant was aware that such a defense could have been put forth at trial, but instead of proceeding to trial, he opted to forego such a defense in favor of the agreed-upon plea. *Kokoraleis*, 193 Ill. App. 3d at 693.

¶ 17 Moreover, as the trial court concluded, the assertions included in the affidavits were insufficient to rebut the factual basis provided by the State and assert a colorable claim of self-defense. Both defendant and Hill acknowledged that the police were already on the scene when they arrived, and neither of them contradicted the State's assertion that several witnesses would testify that defendant struck Vaughn twice in the head, once while he was already on the ground, before fleeing from police.

¶ 18 Nonetheless, defendant cites *People v. Shipp*, 52 Ill. App. 3d 470 (1977) in asserting that he need not act perfectly to claim self-defense. In *Shipp*, defendant shot her ex-husband after he found her in bed with another man. *Id*. 473-74. Defendant's ex-husband had previously shot, beaten, assaulted, and threatened defendant, and was physically far larger and more powerful than her. *Id*. at 476. Although defendant shot her ex-husband several times, including after the attack was over, the shots were fired in a matter of seconds, and he continued to advance on her even after she began shooting at him. *Id*. at 476-77. The court found that the defendant's "terror was both reasonable and complete, and only a matter of seconds elapsed between the firing of the first and last round," then concluded that her claim of self-defense should not be negated merely because she did not act with perfect judgment. *Id*. at 477.

¶ 19 By contrast, the facts in this case show that defendant approached Vaughn who was standing in the middle of the street while police were on the scene and hit him in the head with a baseball bat. After Vaughn had fallen to the ground, defendant again hit him in the head with the bat, then fled from police and attempted to hide in a closet. Neither of the affidavits filed in support of the motion refute the State's evidence that defendant hit Vaughn in the head a second time while he was already on the ground and while police were present. This conduct does not reflect a mere failure to act with perfect judgment as in *Shipp*, but negates his claim of self-defense. Whatever initial justification defendant may have had in defending himself or Hill, his continued aggression against Vaughn, who was already on the ground while police were on the scene, was beyond that reasonably needed for self-defense. *People v. Willis*, 210 Ill. App. 3d 379, 385 (1991); *People v. Ranola*, 153 Ill. App. 3d 92, 99 (1987). Under these circumstances, we find no abuse of discretion by the trial court in denying defendant's motion to vacate his plea. *Dougherty*, 394 Ill. App. 3d at 140.

¶ 20 Defendant also contends that the occurrences on the two court dates preceding his plea could have provided surprise or influence, which caused him to plead guilty. He maintains that the court's decision to permit the State to introduce evidence of the letter and the audio recordings attributed to him, and the court's decision to lower his bail by only $400,000, could have made him more inclined to plead guilty. In support of his contention, defendant cites *People v. Hancasky*, 410 Ill. 148, 154 (1951), where the supreme court noted that "the least surprise or influence causing defendant to plead guilty, when he has any defense at all, should be sufficient cause to permit a change of the plea from guilty to not guilty." In *Hancasky*, defendant contended that the State and the court influenced him into pleading guilty. *Hancasky*, 410 Ill. at 153.

¶ 21 Here, there is no evidence on the record, and defendant does not contend, that he was "influenced," either by the State or the trial court, into entering a guilty plea. Instead, he raises the possibility that the "surprise" produced by the trial court's decision to permit the evidence of the letter and the audio recordings caused him to plead guilty. *Hancasky*, however, does not stand for this proposition; and defendant has not cited, nor has our research revealed any authority showing that defendant should be allowed to withdraw his guilty plea because he was "surprised" by the trial court's ruling on pretrial motions. In addition, defendant's claim that he was so surprised by the trial court's ruling that he was somehow swayed to plead guilty is belied by the fact that a full year passed from the date that the court initially granted the State's motion and when defendant entered his guilty plea, and that the case was before the court for two years before that. In addition, the record shows that the court fully admonished defendant regarding his decision to plead guilty, and that he did so freely and voluntarily, with full awareness of the consequences and the defenses available to him.

¶ 22 Accordingly, we affirm the judgment of the circuit court of Cook County denying defendant's motion to withdraw his guilty plea.

¶ 23 Affirmed.