

SIXTH DIVISION
September 4, 2015

No. 1-14-2106

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

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	14 C3 30173
)	
PAWEL BLONSKI,)	Honorable
)	Thomas P. Fecarotta, Jr.
Defendant-Appellant.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

Held: The trial court did not abuse its discretion by denying defendant's motion to withdraw his guilty plea to the charge of aggravated unlawful restraint.

¶ 1 Defendant Pawel Blonski appeals an order of the trial court denying his motion to withdraw his negotiated plea of guilty to aggravated unlawful restraint in violation of section 10-

3.1(a) of the Criminal Code of 1961 (Code) (720 ILCS 5/10-3.1(a) (West 2008)). Defendant offers a number of reasons why he believes the trial court abused its discretion in denying the motion. We affirm as none of his contentions have merit.

¶ 2

BACKGROUND

¶ 3 On March 19, 2014, defendant was charged by way of information with two counts of armed robbery, one count of aggravated robbery, one count of aggravated unlawful restraint, and one count of unlawful restraint. According to the criminal complaint, defendant robbed Mark Henley of an ounce of cannabis, \$50 dollars in United States currency, and an iPhone 5, while threatening imminent use of force and pointing a firearm at the victim's head. The matter was set for trial on April 22, 2014.

¶ 4 On the day of trial, defendant and his counsel appeared in court at which time counsel requested the trial court to participate in a pretrial conference with him and the prosecutor pursuant to Illinois Supreme Court Rule 402(a) (eff. July 1, 1997). The trial court admonished defendant, explaining to him the purpose of a 402 conference. Defendant stated he had no objection to his counsel participating in the conference.

¶ 5 After the off-record conference concluded and the case was recalled, the parties agreed in open court that in exchange for defendant's plea of guilty to aggravated unlawful restraint, the State would recommend a sentence of 30 months' felony probation with various conditions. The remaining counts in the information would be *nolle prossed*.

¶ 6 Defendant answered in the affirmative when the court asked if he had agreed to withdraw his previously entered plea of not guilty and wished to enter a plea of guilty to the Class 3 felony offense of aggravated unlawful restraint. Defendant also answered in the affirmative when the court asked if he understood the nature of the charge to which he was pleading guilty.

¶ 7 The trial court informed defendant he had a right to plead not guilty and to require the State to prove the charges against him beyond a reasonable doubt. The court explained to defendant that by pleading guilty he waived certain rights, including his right to a jury trial, the right to confront and cross-examine witnesses, the right to present a defense, the right to have the State prove his guilt beyond a reasonable doubt, and the right not to testify against himself. Defendant replied he understood. He stated he was not threatened, coerced, or forced into pleading guilty and received no promises in exchange for his guilty plea.

¶ 8 The trial court explained the sentencing range consequent to pleading guilty to a Class 3 felony. Defendant stated he understood the possible penalties and again confirmed he wished to plead guilty. The court asked defendant his age, to which he replied he was eighteen. Defendant stated he was not under the influence of any drugs or alcohol. The court asked defendant whether he had an opportunity to discuss his plea with his counsel and his mother who was present in court. Defendant answered in the affirmative.

¶ 9 A stipulated factual basis for the charge of aggravated unlawful restraint was then read into the record. The stipulation provided as follows: "Mark Henley would testify that on or about January 11, 2014, he was at or near the general vicinity of 300 Inwood, Drive in Wheeling, Cook County, Illinois. He would identify the defendant Pawel Blonski as an individual who came into that location, and while armed with a deadly weapon, that deadly weapon being a bludgeon, held him and detained him for approximately a half an hour against his will and without lawful authority, thus committing the offense of aggravated unlawful restraint."

¶ 10 After the factual basis was read into the record, the trial court asked defendant if he agreed with the stipulated facts, and defendant stated he did. The court also asked defendant if he was satisfied with his attorney's representation of him and defendant answered, "Yes, sir."

¶ 11 The trial court determined that the defendant's guilty plea was knowing and voluntary, and that a factual basis existed for the plea. The court accepted defendant's plea of guilty to the charge of aggravated unlawful restraint and entered judgment thereon. The parties waived a presentence report and the State acknowledged defendant had no prior criminal history other than a juvenile charge for reckless driving. Before announcing sentence, the court stated to defendant, "Your lawyer did a great job for you. If you violate this probation, you're going to go to the penitentiary. Do you understand?" Defendant answered, "Yes, sir."

¶ 12 Pursuant to the negotiated plea agreement, the trial court sentenced defendant to 30 months' felony probation with the following conditions: a drug and alcohol evaluation followed by random drug testing; collection and indexing of his DNA; fines and costs; and an order directing him not to have any contact with the victim or his family. The court then instructed defendant on how to proceed in the event he wished to withdraw his guilty plea and vacate the judgement, and further informed him of his appellate rights.

¶ 13 Defendant subsequently filed a motion to withdraw his guilty plea and vacate judgment, alleging various grounds for relief. Following a hearing at which defendant testified, the trial court denied the motion. Defendant now appeals the denial.

¶ 14 ANALYSIS

¶ 15 Defendant first contends the trial court erred in denying his motion to withdraw his guilty plea to aggravated unlawful restraint. We disagree.

¶ 16 The decision whether to permit a defendant to withdraw his guilty plea rests within the discretion of the trial court whose decision will not be disturbed on review absent an abuse of that discretion. *People v. Hillenbrand*, 121 Ill. 2d 537, 545 (1988). "A defendant has no absolute right to withdraw a guilty plea and bears the burden of showing the necessity for withdrawal."

People v. Stevens, 324 Ill. App. 3d 1084, 1090 (2001). "Leave to withdraw a plea of guilty is not granted as a matter of right, but as required to correct a manifest injustice under the facts involved." *Id.* A trial court should permit a defendant to withdraw his guilty plea where he demonstrates the plea was entered under a misapprehension of the facts or the law or as a result of misrepresentations by the State or defense counsel, or where there is doubt of his guilt, or where he has a defense worthy of consideration, or where the ends of justice would be better served by submitting the case to a jury. *People v. Artale*, 244 Ill. App. 3d 469, 475 (1993).

¶ 17 In this case, defendant argues his guilty plea was involuntary and should have been vacated because it was obtained through his counsel's threats, erroneous advice, and coercion. In support of these allegations, defendant makes the following claims: his counsel failed to explain to him what a 402 conference was and instead told him "I think they'll find you guilty" as a way to convince him to allow counsel to participate in the conference, adding the judge would "look at [him] bad" if he refused to participate in the conference; counsel erroneously advised him that the felony plea he entered would be expungeable or sealable; and counsel informed him that if he did not accept the plea deal he would be given a 21-year prison sentence and would be immediately taken into custody.

¶ 18 Our supreme court has determined that the fact that a defendant may have entered a guilty plea because of some erroneous advice of counsel does not alone destroy the voluntary nature of the plea. *People v. Pugh*, 157 Ill. 2d 1, 14 (1993). Rather, whether a defendant's guilty plea, made in reliance on counsel's advice, was voluntary and knowing depends on whether the advice amounted to ineffective assistance. *Id.*

¶ 19 In *Hill v. Lockhart*, 474 U.S. 52 (1985), the United States Supreme Court determined that the two-part test established in *Strickland v. Washington*, 466 U.S. 668 (1984), for Sixth

Amendment ineffective assistance of counsel claims also applies to challenges to guilty pleas alleging ineffective assistance of counsel. *Pugh*, 157 Ill. 2d at 14; *People v. Hall*, 217 Ill. 2d 324, 334-35 (2005). In order for a defendant to establish that he was deprived of the effective assistance of counsel, he must show that: (1) counsel's performance was so deficient as to fall below an objective standard of reasonableness under prevailing professional norms, and (2) the deficient performance so prejudiced defendant that there is a reasonable probability that, absent the errors, the outcome would have been different. *People v. White*, 322 Ill. App. 3d 982, 985 (2001).

¶ 20 A defendant must satisfy both prongs of the *Strickland* test in order to prevail on a claim of ineffective assistance of counsel. However, it is well settled that, if the claim can be disposed of on the ground that defendant did not suffer prejudice from the alleged ineffective performance, then the court need not decide whether counsel's performance was constitutionally deficient. See, e.g., *People v. Givens*, 237 Ill. 2d 311, 331 (2010) ("If it is easier to dispose of an ineffective assistance claim on the ground that it lacks sufficient prejudice, then a court may proceed directly to the second prong and need not determine whether counsel's performance was deficient."). In this case, even if we were persuaded, which we are not, that defense counsel's performance was deficient, defendant's arguments still lack merit because he fails to show how he was prejudiced by counsel's advice to plead guilty to aggravated unlawful restraint while armed with bludgeon rather than proceed to trial on an information which included charges of armed robbery with a firearm and aggravated robbery with a firearm.

¶ 21 To establish prejudice in the context of an alleged involuntary or unknowing guilty plea, a defendant must show there is a reasonable probability that, absent counsel's errors, he would have pleaded not guilty and insisted on going to trial. *Hall*, 217 Ill. 2d at 335. However, a

defendant's bare allegation that he would have refrained from pleading guilty and insisted on going to trial if counsel had not been deficient is not enough to establish prejudice. *People v. Rissley*, 206 Ill. 2d 403, 458 (2003). Rather, the defendant's claim must be accompanied by either a claim of innocence or the articulation of a plausible defense that could have been raised at trial. *Hall*, 217 Ill. 2d at 335-36. In this case, defendant did not make a claim of innocence or articulate a plausible defense.

¶ 22 Moreover, the record supports the trial court's finding that defendant's guilty plea was both knowing and voluntary. Prior to accepting the plea, the trial court admonished defendant pursuant to Rule 402, in an effort to ensure that his plea was informed, knowing, and voluntary. The court admonished defendant on the nature of the charges, the constitutional rights he would waive by pleading guilty and the sentences it could impose. The court asked defendant if anyone had forced or threatened him into pleading guilty. Defendant indicated he understood the rights he was giving up, that no one had forced or coerced him into taking the plea, and that he still intended to plead guilty. The court found a factual basis existed for defendant's guilty plea, determined the plea was knowing and voluntary, sentenced him according to the parties' plea agreement and then admonished him of his appellate rights.

¶ 23 Defendant finally contends that our supreme court's interpretation of *Strickland's* prejudice prong in the context of guilty pleas is unconstitutional. As discussed, our supreme court has determined that in order to satisfy *Strickland's* prejudice prong in the context of a guilty plea it is not enough for a defendant to merely allege he would have refrained from pleading guilty and insisted on going to trial if his counsel had not been deficient. Rather, the defendant's claim must be accompanied by either a claim of innocence or the articulation of a plausible defense that could have been raised at trial. *Hall*, 217 Ill. 2d at 335-36. Defendant argues that

this prejudice standard is unconstitutional because it imposes a heavier burden on a defendant than does *Strickland*, where in order to demonstrate prejudice a defendant must show there is a reasonable probability that, but for counsel's unprofessional errors, the outcome of the proceeding would have been different.

¶ 24 We decline defendant's invitation to review this issue. As an appellate court, we are bound to honor our supreme court's conclusion on an issue "unless and until that conclusion is revisited by our supreme court or overruled by the United States Supreme Court." *People v. Fountain*, 2012 IL App (3d) 090558, ¶ 23.

¶ 25 We conclude that the trial court did not abuse its discretion by denying defendant's motion to withdraw his guilty plea to the charge of aggravated unlawful restraint. Accordingly, for the reasons set forth above, we affirm the judgment of the trial court of Cook County.

¶ 26 Affirmed.