2015 IL App (2d) 130456-U
Nos. 2-13-0456 & 2-15-0125 cons.
Order filed December 30, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Winnebago County.
Plaintiff-Appellee,	)	
v.	)	No. 10-CF-2985
DWAYNE C. BUCHANAN,	)	Honorable John R. Truitt,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in denying defendant's motion to withdraw his guilty plea: although defendant might have had a valid basis for a motion to suppress, defendant pleaded guilty instead of allowing defense counsel to investigate that basis, and defendant's own testimony defeated his contention that his son with the same name committed the offense.

¶ 2 Defendant, Dwayne C. Buchanan, appeals from the denial of his third amended motion to withdraw his plea of guilty to the charge of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2010)).[1] Defendant argues that the trial court abused its discretion in

[1] This consolidated appeal also incorporates defendant's appeal from the first-stage

denying his motion, because he has a meritorious defense, there is doubt of his guilt, and the ends of justice would be better served by submitting the case to a trial. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On October 27, 2010, defendant was indicted on two counts of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2010)), one count of possession of firearm ammunition without possessing a firearm owner's identification (FOID) card (430 ILCS 65/2(a)(2) (West 2010)), and one count of possession of a firearm without possessing a FOID card (430 ILCS 65/2(a)(1) (West 2010)).

¶ 5 On January 31, 2011, defendant pleaded guilty to unlawful possession of a weapon by a felon, in exchange for the dismissal of the remaining charges and a sentence of 30 months' probation with 180 days in jail. The factual basis of the plea established that defendant was the owner of certain condemned property in Rockford. On September 29, 2010, Rockford police, while assisting Rockford building-code enforcers with an inspection of defendant's property, saw a pistol in a partially open nightstand drawer, along with a box of ammunition. When police

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dismissal of his *pro se* petition under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq*. (West 2012)), which defendant filed on January 23, 2013, and which was dismissed as frivolous and patently without merit on March 19, 2013 (appeal No. 2-13-0456). On July 11, 2014, we ordered that the appeal be held in abeyance, pending the outcome of the proceedings on defendant's third amended motion to withdraw his guilty plea. The allegations in the postconviction petition were incorporated into the third amended motion to withdraw his guilty plea, which is the subject of this appeal. Defendant does not raise a separate issue concerning the dismissal of the postconviction petition.

opened the drawer to retrieve the pistol, they found a second pistol and two pill bottles prescribed to defendant. In the same room were multiple items of mail addressed to defendant. Defendant did not have a FOID card. Defendant had previously been convicted of a felony in Illinois. The court admonished defendant about the charge and the sentencing range. The court also admonished him about the rights he would give up by pleading guilty. Defendant stated that he understood. Defendant agreed that he was pleading guilty of his own free will. The court accepted the factual basis of the plea and found defendant's plea to be knowing and voluntary. The court sentenced defendant in accordance with the parties' agreement and advised defendant of his right to appeal.

¶ 6 Defense counsel filed a timely motion to withdraw the plea but did not file a certificate under Illinois Supreme Court Rule 604(d) (eff. July 1, 2006) until that motion had been denied. On appeal, we found that, because counsel's certificate did not precede the hearing on defendant's motion, counsel's certificate was untimely and invalid. *People v. Buchanan*, 2011 IL App (2d) 110733-U, ¶ 4 (summary order). We remanded for the filing of a timely and valid Rule 604(d) certificate, the opportunity to file a new motion to withdraw the plea, and a new hearing. *Id.*

¶ 7 On remand, on December 22, 2011, defense counsel filed an amended motion to withdraw the guilty plea. During the course of the proceedings, defendant indicated to the court that he wanted new counsel. The court stated that defendant was not entitled to new counsel but allowed defendant to file a *pro se* "Motion to Withdraw Guilty Plea and Vacate Judgment." In the motion, defendant made numerous allegations concerning defense counsel's ineffectiveness and asked that new counsel be appointed. Following a hearing, the court denied the motion. On appeal, we found that, although the trial court committed no error in concluding that defendant's

pro se claims of ineffectiveness were without merit, the court should have informed defendant that he was not entitled to conflict counsel and, at that point, allowed counsel to argue any remaining issues (or taken a proper waiver of counsel). *People v. Buchanan*, 2013 IL App (2d) 120447, ¶ 24. We remanded the case for the opportunity to file a new motion to withdraw the guilty plea and a new hearing. *Id*. ¶ 27.

¶ 8 On remand, on October 7, 2014, defendant filed a third amended motion to withdraw his plea, arguing (1) that he did not knowingly and voluntarily plead guilty or understand the court's admonishments; (2) that his plea was entered through a misapprehension of the facts and law, that he has a viable defense to the charges, and that it would be a manifest injustice to not allow him to withdraw his plea; and (3) that he was denied the effective assistance of counsel. He alleged that counsel's deficient performance included, *inter alia*, failing "to advise the defendant regarding the law of administrative searches by building inspectors and use of force to enter premises, which supported his claim that the premises were subject to an unlawful search."

¶ 9 The following relevant testimony was presented at the hearing. James Vronch, a code-enforcement officer and building inspector for the city of Rockford, testified that, a few days prior to September 29, 2010, he went to check on property located at 625 Furman Street in Rockford (the property). The property had previously been condemned after two feet of feces was discovered in the basement. While at the property, Vronch saw an individual looking out of an upstairs window. Vronch returned a few days later, along with two police officers, and knocked on the door. As he was discussing with the officers whether they should get a search warrant, he saw someone look out of a window. Vronch testified: "[A]s a certified building inspector, if I know that somebody is in a building and might be dangerous, I can use reasonable force to go inside to protect anybody in there from life safety issues. That's a decision we

discussed." At that point, defendant walked around from the side of the house and asked why they were there. Vronch told him that the building had been condemned and that they wanted to go inside to see if anyone was there. When Vronch asked for consent, defendant told him that he had a key but would have to go get it. At that point, the door opened and a man said, " 'Come on in.' " The man told them that he was renting a room from defendant. Vronch could smell feces. Defendant then told Vronch that he had no right to be on the property and that the building had not been condemned. Defendant tired to "get physical" with Vronch. Defendant was placed in a squad car, and Vronch entered the property with an officer.

¶ 10 Vronch testified that he went into the basement and saw that the feces was still present. He then told the officer that he needed to make sure that there was no one in the property, because the gas, which was making him lightheaded, could kill. After checking the first floor and finding no one, Vronch went upstairs with the officer. The man who had opened the front door showed them his bedroom and stated that he did not know that the property had been condemned. Vronch found a second bedroom and looked through an opened door. He saw on a bed a shoebox containing numerous little bags and a big bag containing what appeared to be drugs. He told the officer, who had been standing in the hallway, that he should take a look. Vronch walked down the hallway and found a third bedroom that had a padlock latch on the door. The lock was just hanging on the door, and Vronch pushed the door open. He saw a TV that was on, a partially-eaten sandwich, a drink, and seven or eight printers. He told the officer that there was something wrong and that he should take a look. The officer entered the room and Vronch heard the officer say, " 'gun found.' " Vronch left for his own safety.

¶ 11 Defendant testified that he did not own the property but managed it. He stated that he arrived at the property on September 29, 2010, and saw several police cars and several city-

inspector cars. A police officer told him that they wanted to search the property. Defendant said no and told them to leave. Vronch started banging on the door, and defendant told him to get off the porch. An officer told him that they were going to force the door open. "Al," who was inside the property, opened the door. When Al came outside, defendant tried to pull the door shut. An officer put his foot in the door so that defendant could not shut it. Defendant moved out of the way and told them that he did not want them in there. Vronch entered, along with several officers. Defendant showed them the basement. There was a hole in the basement floor with water in it, but there was no feces or odor. Defendant told them to leave, but Vronch and the officers went upstairs. Defendant followed. Two bedroom doors were shut, and one was open. They looked into the open room. They then proceeded to the next bedroom. Defendant unlocked the door for them. Vronch picked up a shoebox from the floor and told an officer to come look at it. Defendant was escorted outside by an officer and put in a police car.

¶ 12 Defendant testified further that he spoke with defense counsel regarding the propriety of the search and that counsel had filed a motion to suppress evidence. Defense counsel told him that the basis of the motion was the absence of a search warrant. According to defendant, a hearing on the motion to suppress had been set for January 7, 2011, but had been continued to January 31. On January 31, defense counsel told him that he was going to call the city inspector to testify on the motion to suppress. Defense counsel also told him that the State had made an offer of probation. Defendant told counsel that he did not want probation, but "[t]hen we got in the courtroom and I realized he—suggested to me he don't want to come to court, so I just pleaded guilty." Thereafter, the following colloquy occurred:

> "Q. So you knew that witnesses were there. He told you the building inspector was there to testify contesting the warrant, just like Mr. Vronch was here today?

A. Yes.

Q. But you decided to plead guilty?

A. Yes. I mean why didn't the police testify? They the one [*sic*] that went in, they should explain why they went in.

Q. Did you think at the time to ask for another continuance to have some other individuals present to testify on your behalf?

A. It had been continued for 125 days. He didn't call them, he ain't going to call them. I was locked up for 125 days for the same hearing.

Q. Did you discuss with [defense counsel] the issue of the administrative search warrant?

A. Yes.

Q. Do you recall the substance of those discussions? He was prepared to argue that they needed an administrative search warrant?

A. No, he said—he didn't go into details. He didn't explain."

¶ 13 Defendant was questioned about mail addressed to "Dwayne Buchanan" and the pill bottles prescribed to "Dwayne Buchanan" that were found in the bedroom with the gun and ammunition. When asked whether there were other individuals with this name, he testified that his son was named Dwayne Buchanan. He testified that his son "was paroled to that address." When asked whether he told defense counsel that his son was living at the house, he replied, "I never said he was living there. I said he was paroled there." He was then asked whether he ever told defense counsel that the mail or pill bottles belonged to his son, and he replied, "No." Although he denied owning the house or staying in any of the bedrooms, all of the property (such as the computers and TVs) in the house belonged to him because he "claimed it," and he wanted

it returned to him. When asked whether there was any other basis upon which he was relying to withdraw his plea, he responded: "It wasn't my gun. It wasn't my gun at all. To make a long story short, I'm innocent. I never had possession of a firearm."

¶ 14 Defense counsel testified that he discussed the police reports and the motion to suppress with defendant. Counsel reviewed the "Code for Inspectors" with defendant. Counsel had subpoenaed three Rockford building inspectors, and, on January 31, they appeared in court for the hearing on the motion. Counsel testified that, when he spoke with Vronch that day, Vronch informed him that they no longer used the code that counsel had reviewed with defendant. According to Vronch, they had entered the room under a different code or ordinance. Counsel informed defendant about what Vronch told him and advised defendant that he believed that they should ask for a continuance. Counsel testified: "I did not believe I could go forward that day because I had no knowledge of that code before." When asked what would have occurred had defendant not pleaded guilty that day, the following transpired:

> "A. It was my advice to continue the case because of the inspector's telling me that they went by a different code than what I had discussed with [defendant], and it was a code I was not familiar with so I wanted to get more familiar with that code to be able to question them about that.
>
> Q. And was this your client's decision to then plead guilty?
>
> A. Yes."

¶ 15 The trial court denied defendant's third amended motion. Regarding defendant's claim that he should be allowed to withdraw his guilty plea because of a viable defense concerning the search, the court stated:

> "Quite frankly, whether there's a genuine issue of fact as to a viable defense, when [defense counsel's] ready to put on that defense, the defense being this evidence ought to be suppressed, and the Defendant doesn't want [defense counsel] to proceed with that motion and decides that he wants to plead guilty instead, I can't accept that the Motion to Withdraw Guilty Plea ought to be granted. [Defense counsel] was ready, willing and able to proceed to argue the suppression of the evidence challenging the warrantless entry and the Defendant chose not to and to plead guilty in exchange for a term of probation."

¶ 16 Defendant timely appealed.

¶ 17 II. ANALYSIS

¶ 18 Defendant argues that the trial court abused its discretion in denying his third amended motion to withdraw his plea, because he has a meritorious defense and there is doubt of his guilt. We disagree.

¶ 19 "A defendant has no absolute right to withdraw his guilty plea and bears the burden of demonstrating to the trial court the necessity of withdrawing his plea." *People v. Artale*, 244 Ill. App. 3d 469, 475 (1993). The court should permit a defendant to withdraw a guilty plea " '[w]here it appears that the plea of guilty was entered on a misapprehension of the facts or of the law, or in consequence of misrepresentations by counsel or the State's Attorney or someone else in authority, or the case is one where there is doubt of the guilt of the accused, or where the accused has a defense worthy of consideration by a jury, or where the ends of justice will be better served by submitting the case to a jury.' " *People v. Davis*, 145 Ill. 2d 240, 244 (1991) (quoting *People v. Morreale*, 412 Ill. 528, 531-32 (1952)). The decision whether to grant or deny a motion to withdraw a guilty plea lies within the sound discretion of the trial court, and we will not disturb that decision absent an abuse of discretion. *Id.* "An abuse of discretion will be

found only where the court's ruling is arbitrary, fanciful, unreasonable, or no reasonable person would take the view adopted by the trial court." *People v. Delvillar*, 235 Ill. 2d 507, 519-20 (2009).

¶ 20 Defendant argues that he should be allowed to withdraw his plea because he has a meritorious defense, *i.e.*, that evidence should be suppressed based on a violation of his Fourth Amendment rights. However, the record makes clear that, on November 19, 2010, defense counsel filed a motion to suppress evidence, based on that alleged violation. Defense counsel had subpoenaed witnesses for the hearing and interviewed the witnesses. Defense counsel was prepared to go forward with the hearing on January 31 until he learned from Vronch that Vronch was going to rely upon a code different from the one that counsel had reviewed with defendant. Counsel then advised defendant that they should ask for a continuance so that counsel could familiarize himself with the code. (We note that, contrary to defendant's claim below, as of that date the motion had been pending for 73 days, not for 125 days.) Defendant argues that he pleaded guilty under a misapprehension of his Fourth Amendment rights and the strength of his suppression motion. He argues that counsel overlooked the issue of how Vronch and the officers had entered the house. However, we have no way of knowing what counsel would have argued in support of the motion to suppress, nor do we know whether he would have been successful. Given that counsel was ready and willing to pursue the suppression of the evidence and that it was defendant's choice to forgo pursuing the motion and to instead plead guilty, we cannot say that the ends of justice favor allowing defendant to withdraw his plea.

¶ 21 Defendant also contends that he should be allowed to withdraw his plea because the gun did not belong to him. Defendant states that he has a son named "Dwayne Buchanan" and that his son was "paroled" to the property. However, he made clear that he "never said [his son] was

living there" and that he never told counsel that the mail or prescriptions belonged to his son. Indeed, he maintained that all of the property in the house belonged to him.

¶ 22 A defendant seeking to withdraw a guilty plea has the burden of demonstrating to the trial court that withdrawal is necessary to correct a manifest injustice based on the facts of the case. *People v. Bovinett*, 73 Ill. App. 3d 833, 835 (1979). Here, the trial judge, who had thorough knowledge of defendant's case, determined that withdrawal was not necessary to correct any manifest injustice. We cannot say that such a determination was an abuse of discretion.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we affirm. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 25 Affirmed.