2015 IL App (4th) 131100-U

NO. 4-13-1100

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
October 8, 2015
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
TREMAYNE T. DOZIER,	)	No. 11CF717
Defendant-Appellant.	)	
	)	Honorable
	)	James R. Coryell,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justice Appleton concurred in the judgment.
Justice Turner dissented.

ORDER

¶ 1 *Held*: The appellate court reversed the trial court's judgment and remanded with directions to allow defendant to withdraw his guilty pleas for armed violence, unlawful possession of a weapon by a felon, and aggravated resisting a peace officer.

¶ 2 In May 2012, defendant, Tremayne T. Dozier, entered an open guilty plea to one count of armed violence, one count of possession of a weapon by a felon, and one count of aggravated resisting a peace officer. In August 2012, the trial court sentenced to defendant to 18 years' imprisonment for armed violence, 5 years' imprisonment for unlawful possession of a weapon by a felon, and 5 years' imprisonment for aggravated resisting a peace officer, with all three sentences to run concurrently. In September 2012, defendant filed a *pro se* motion to withdraw his guilty plea, which appointed counsel adopted in September 2013, and the trial court denied after a November 2013 hearing.

¶ 3 Defendant appeals, arguing the trial court erred when it denied his motion to withdraw his guilty plea because he relied on trial counsel's misleading and erroneous advice that (1) counsel was required to inform the State of his prior convictions regardless of whether he testified at trial; and (2) if convicted after a trial, he would have to serve 85% of his sentence for the offense of armed violence. Defendant further argues his five-year extended-term sentence for aggravated resisting a peace officer was not statutorily authorized and is therefore void. We reverse and remand with directions.

¶ 4 I. BACKGROUND

¶ 5 In May 2011, the State charged defendant with one count of armed violence (720 ILCS 5/33A-2(a) (West 2010)) (count I), one count of aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1)(3)(A) (West 2010)) (count II), one count of unlawful possession a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2010)) (count III), one count of aggravated resisting a peace officer (720 ILCS 5/31-1(a-7) (West 2010)) (count IV), and one count of unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2010)) (count V).

¶ 6 In May 2012, defense counsel filed a motion *in limine* to prevent the State from introducing evidence of a prior felony conviction for aggravated battery (Macon County case No. 11-CF-1291) and a prior misdemeanor conviction from Texas (Cause 11-CF-1291) should defendant choose to testify. The trial court granted defendant's motion as to the misdemeanor conviction but denied the motion as to the aggravated battery conviction, finding, if defendant testifies, "the jury is entitled to hear anything that bears on the issue of credibility."

¶ 7 Defendant's case proceeded to trial and a jury was impaneled. After a noon recess, the trial court reconvened and trial counsel advised the court defendant just disclosed to him two prior Indiana convictions. Counsel stated, "I just notified [the State] ***. I think I had

an obligation to do that on the court order, the discovery order when I found out about it. At this point we are going to enter a plea which requires a sentencing hearing at a future date." Defendant then entered into an open guilty plea to counts I, III, and IV.

¶ 8 The trial court admonished defendant pursuant to Illinois Supreme Court Rule 402(a) (eff. July 1, 1997), fully informing him of the charges against him and the rights he was giving up by pleading guilty. Defendant stated he (1) understood the admonishments and the potential penalties that could be imposed, (2) had not received any threats or promises in exchange for pleading guilty, and (3) was entering his guilty plea freely and voluntarily.

¶ 9 The State then presented the following factual basis.

> "Called for hearing the evidence would show that on April 8th of 2011 former officer Stephen Kirk was on duty in his capacity as a patrol officer with the City of Decatur Police Department. He and a backup officer by the name of Martin St. Pierre were detailed to the area of 437 South Boyd Street here in Decatur in reference to a party with loud music. When they got to that area, they saw several black males who were walking northbound on the west side of the street approaching them. At that time they ordered them to stop. Three of the individuals stopped. One did not. The one who did not was later identified as this defendant. The defendant ran from that area and was chased on foot by Officer Kirk who ultimately tackled him in a grassy lot near Haworth Street here in Decatur. During the course of tackling him, Officer Kirk was injured in that he hit his head and caused injury to his forehead. At

that time the defendant was searched, at which time Officer Kirk located a white powder[y] substance in his pocket. He was then placed into the squad car that was being driven by Officer Kirk and taken to the Law Enforcement Center. After being transported to the Law Enforcement Center, Officer Kirk contacted Detective Dailey of the Decatur Police Department who is the on-call street crimes detective, and this defendant was then turned over to Detective Dailey. Pursuant to an agreement by this defendant to cooperate with the Decatur Police Department Street Crimes Unit, he was released that day without being arrested. Subsequent to that, on April 9th of 2011, Officer Tamara Tucker was going into service in the same car that had been used to transport this defendant. When she did a pre-service check of that squad car, she located a loaded .38-caliber Smith & Wesson revolver which was tucked up underneath the driver's seat. She contacted her sergeant; at which time the gun was recovered, made safe, and placed into evidence. It was determined that Officer Kirk had done—had not done a post-service check when he brought the defendant back into the Law Enforcement Center prior to turning him over to Detective Dailey. After locating that weapon, Detective Dailey contacted this defendant to discuss with him not only his cooperation, but also the location of this gun. During the course of a videotaped interview, this defendant then admitted to Detective Dailey that he,

in fact, had the gun on his person at the time that he was apprehended by former Officer Stephen Kirk but that it had been missed during the search, and that he, while in the squad car, shook his leg until the gun fell down his pant leg, at which point he kicked it up under the seat."

The trial court accepted defendant's guilty plea and directed court services to prepare a presentence investigation and report.

¶ 10 In June 2012, defendant filed a *pro se* motion to withdraw his guilty plea. In the motion, defendant alleged his plea "was entered without sufficient understanding and contemplation." Later that month, trial counsel filed an amended motion to withdraw defendant's guilty plea, arguing (1) defendant did not fully understand the consequences of his plea, (2) the trial court improperly informed defendant he was extended-term eligible, (3) defendant mistakenly believed his Indiana convictions would be introduced into evidence whether he testified or not, and (4) defendant was not guilty of armed violence.

¶ 11 In July 2012, the trial court held a hearing on defendant's amended motion to withdraw his guilty plea. At the hearing, the following colloquy between defendant and the trial court took place.

"Q. [Defendant], you've indicated that somehow you came to believe that these Indiana convictions would be used against you—

A. Yes, sir.

Q. —if you testified or not?

A. Yes, sir.

Q. Did anybody tell you that or is it just something you decided on your own?

A. No. [Trial counsel] came to me and, um, advised me that he had these charges and he was gonna bring them up to the Court and I didn't—you know what I'm saying—he didn't say that they was gonna be used against me if I got on or not but he said we got to disclose these to the State and you know what I'm saying? Of course these—these will be used, you know what I'm saying? But I didn't know if they was going to be used whether or not I testified or not. I just felt I was already in trial, he come up with some new charges, it's like adding—adding—giving the State, uh, more against me because these convictions is for weapons possession in the past in Indiana.

Q. Okay. But did he—he didn't tell you that they would be used if you testified or not, did he?

A. No.

Q. Okay. So this is just a conclusion you reached on your own?

A. Yeah."

Trial counsel then indicated he did not have an independent recollection of his conversation with defendant regarding the Indiana convictions, but he was confident he did not tell him they would be used "no matter what."

¶ 12 Following the hearing, the trial court denied defendant's motion to withdraw his guilty plea. In doing so, the trial judge noted, "the belief that *** somehow Indiana convictions come in automatically but Illinois convictions are subject to Motions [*in Limine*] *** strikes me as ludicrous."

¶ 13 In August 2012, defendant's sentencing hearing was held. In defendant's presence, trial counsel stated, "I do want to point out to the Court that something that [the State] said that is markedly true here than it is in most other cases, and that is, this is a very fairly severe minimum sentence. Fifteen years is pretty severe. It is an 85[%] sentence making it even more so." The State then clarified, "This is not a case in which the defendant would be required to serve 85[%] of any sentence imposed," to which trial counsel responded, "I misspoke on that." The trial court then sentenced defendant to 18 years' imprisonment on count I, to run concurrently with 5 years' imprisonment on count III and 5 years' imprisonment on count IV.

¶ 14 In September 2012, defendant filed a second *pro se* motion to withdraw his guilty plea as well as a notice of appeal, which was dismissed by this court pending the resolution of defendant's second motion to withdraw his guilty plea.

¶ 15 In defendant's second motion to withdraw his guilty plea, he alleged as follows: (1) on the day of trial, trial counsel advised him his Indiana convictions would be used against him regardless of whether he took the stand; (2) trial counsel told him if he proceeded to trial and was convicted he would be facing between 15 and 30 years in prison at 85%, which was false; (3) he was not guilty of armed violence and was coerced into confessing; and (4) trial counsel advised him he could not ask for a continuance to discuss the Indiana convictions but that instead he could take an open plea and later withdraw it and proceed to trial.

¶ 16 In September 2013, the trial court appointed defendant new counsel due to his allegations regarding trial counsel's representation. Appointed counsel adopted defendant's *pro se* pleadings and filed a certificate in compliance with Illinois Supreme Court Rule 604(d) (eff. Feb 6, 2013).

¶ 17 In November 2013, the trial court held a hearing on defendant's second motion to withdraw his guilty plea, at which defendant's trial counsel, Howard Baker, testified. Baker stated, prior to trial, he became aware of convictions defendant had out of Indiana, which he believed "significantly effected [*sic*] the defense [he] intended to present." Baker explained the prior convictions he knew about did not involve weapons but defendant's Indiana convictions "were for weapons," and defendant's intended defense was that he would never have anything to do with weapons.

¶ 18 The State asked Baker whether he told defendant his Indiana convictions would be used against him regardless of whether he took the stand to testify. Baker stated:

> "I told [defendant] as I recollect that if he took the stand, those convictions come in, that the only way we could present the defense that we wanted to present was for him to testify that he would never have anything to do with the weapons. That was the intention of the defense to begin with. Uh—I also told [defendant] that I didn't feel it was [a] great defense, given that there were statements he made to the officers—uh—confessing to the crime, but this was the defense that he wanted me to present. So, that's what we we're [*sic*] going with. Once we discovered the

convictions for weapons out of Indiana, I said that defense kind of went out the window."

¶ 19 On cross-examination, appointed counsel asked Baker whether he specifically recalled not telling defendant his Indiana convictions would be used against him if he chose not to testify. Baker responded, "I don't know how you can recall something that didn't happen. I know what I told him. I don't know what I didn't tell him."

¶ 20 With regard to whether he told defendant he would be required to serve 85% of his sentence, Baker stated he did not recall having the conversation but explained he has a truth-in-sentencing "cheat sheet" he keeps with him, which lists what offenses qualify for the 85% restriction. He explained he "would be surprised if [he] didn't refer to [his] sheet and give him [the correct] answer," but he could not say for sure either way because everything "happened fairly quickly in the courtroom."

¶ 21 The trial court then asked Baker where he felt his obligation to disclose defendant's prior record came into play. Baker responded his reading of a pretrial discovery order required him to do so. A pretrial discovery order in this case required defendant to disclose to the State "the names of person(s) he intends to call as witnesses *** and any record of prior criminal convictions of said witnesses known to the Defendant or his defense counsel."

¶ 22 Following presentation of the evidence, the trial court denied defendant's second motion to withdraw his guilty plea. With regard to defendant's contention trial counsel advised him his Indiana convictions would be used against him regardless of whether he chose to testify, the court stated:

"That allegation does not seem very credible in light of the fact that prior to him entering a guilty plea, we had gone through a

motion in limine where he was present regarding the exclusion of prior convictions. He filed a motion—it's a written motion—it was filed May 16th. There was a hearing conducted on the motion as to whether or not the prior convictions should be used, and there was a ruling that the State was not going to use some of the prior convictions. I excluded some of the prior convictions, and one prior conviction was used. Whether or not—so, I don't think it's likely—I find it hard to believe that he was—that somehow he said that these convictions unlike the others could be used whether he testified or not."

With regard to defendant's contention trial counsel informed him he would be required to serve 85% of his sentence if convicted after a trial, the court stated:

"And then—uh—and then, we get into this 85[%] business. There was a—during the colloquy with the guilty plea, there was never any issue raised by the defendant about the guilty plea, about whether or not—I mean, about whether or not it was 85[%.]"

Finally, the court explained:

"[A]nd then, we get to the issue of the disclosure of the statements. I don't—I got [*sic*] some reservations about whether he had a duty to disclose his client's prior convictions. I don't know. Clearly, he could not put his client on the stand and testify that he had nothing to do with weapons when, in fact, he knew that he had prior

weapons convictions. I mean, that—you know, aside from the duty to disclose, he couldn't suborn perjury.

So I think there is no merit to the motion."

¶ 23 This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 Defendant first argues the trial court erred when it denied his second motion to withdraw his guilty plea because trial counsel erroneously advised him (1) he was obligated to disclose the Indiana convictions without explaining they would not be admitted into evidence if he chose not to testify, and (2) he would be required to serve 85% of his sentence for armed violence if he was convicted after a trial.

¶ 26 The State argues, because the record does not contain the confidential communications between defendant and trial counsel, this issue would be better raised, if at all, in a petition for postconviction relief. See *People v. Millsap*, 374 Ill. App. 3d 857, 863, 873 N.E.2d 396, 403 (2007) ("When, as here, the defendant's ineffective-assistance-of-counsel claims require consideration of matters outside the record on direct appeal, a proceeding for postconviction relief is better suited for addressing defendant's claims because a complete record can be made***."). We find *Millsap* inapposite, as it involved a claim of ineffective assistance of counsel for failing to file a motion to suppress the defendant's statements to police based on an unconstitutional seizure—an issue never addressed by the trial court. *Id.* at 862, 873 N.E.2d at 402.

¶ 27 In the present case, defendant's ineffective-assistance-of-counsel claim involves a motion to withdraw his guilty plea and was fully addressed at a hearing mandated by Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013). Our supreme court has explained the purpose of

such a hearing is to allow the trial judge who accepted the plea and imposed the sentence an "opportunity to hear the allegations of improprieties that took place outside the official proceedings and *dehors* the record, but nevertheless were unwittingly given sanction in the courtroom." *People v. Wilk*, 124 Ill. 2d 93, 104, 529 N.E.2d 218, 221-22 (1988).

¶ 28 The trial court held a hearing on defendant's second motion to withdraw his guilty plea in November 2013. At that hearing, appointed counsel stipulated defendant would testify to the allegations contained in his motion to withdraw his guilty plea, and trial counsel testified and was subjected to cross-examination regarding his recollection of any communications that may have taken place between himself and defendant prior to defendant entering his guilty plea. We conclude the record contains sufficient evidence for us to address the viability of defendant's ineffective-assistance-of-counsel claim at this juncture.

¶ 29 Looking to defendant's contentions on the merits, we first note a defendant does not have an absolute right to withdraw his guilty plea. *People v. Manning*, 227 Ill. 2d 403, 412, 883 N.E.2d 492, 498 (2008). However, a court should allow a defendant to withdraw his plea of guilty where (1) the plea is based on a misapprehension of the facts or the law or on misrepresentations of counsel, (2) there is doubt as to defendant's guilt, (3) the accused has a defense worthy of consideration by a jury, or (4) the ends of justice will be better served by submitting the case to a jury. *People v. Davis*, 145 Ill. 2d 240, 244, 582 N.E.2d 714, 716 (1991).

¶ 30 "The decision to grant or deny a motion to withdraw a guilty plea rests in the sound discretion of the [trial] court and, as such, is reviewed for abuse of discretion. [Citation.] 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, 922 N.E.2d 330, 338 (2009).

¶ 31 A challenge to a guilty plea alleging ineffective assistance of counsel is subject to the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *Hill v. Lockhart*, 474 U.S. 52, 57 (1985). To prevail on a claim of ineffective assistance of counsel, a defendant must show (1) counsel's performance fell below an objective standard of competence, and (2) the defendant suffered prejudice as a result of that deficient performance. *Strickland*, 466 U.S. at 687. An attorney's conduct is deficient if the attorney fails to ensure the defendant's guilty plea was entered voluntarily and intelligently. *People v. Hall*, 217 Ill. 2d 324, 335, 841 N.E.2d 913, 920 (2005).

¶ 32 To establish prejudice, the defendant must show a reasonable probability that, absent counsel's errors, the defendant would have pleaded not guilty and insisted on going to trial. *Hill*, 474 U.S. at 59. However, "[a] bare allegation that the defendant would have pleaded not guilty and insisted on a trial if counsel had not been deficient is not enough to establish prejudice." *Hall*, 217 Ill. 2d at 335, 841 N.E.2d at 920. Rather, the defendant's claim must be accompanied by either (1) a claim of actual innocence or (2) the articulation of a plausible defense that could have been raised at trial. *Id.* at 335-36, 814 N.E.2d at 920. The question of prejudice depends in large part on predicting whether the defendant likely would have been successful at trial. *Id*. at 336, 814 N.E.2d at 921.

¶ 33 In this case, defendant argues his decision to plead guilty was based upon his trial counsel's erroneous advice regarding (1) his prior convictions and (2) the application of the truth-in-sentencing law (730 ILCS 5/3-6-3(a)(2.1) (West 2010)). We conclude this appeal can be resolved by solely addressing defendant's truth-in-sentencing claim.

¶ 34 Defendant's second motion to withdraw his guilty plea alleged trial counsel advised him he would be required to serve 85% of his sentence if he proceeded to trial and was

convicted, when in fact, he was eligible for day-for-day good-conduct credit. See 730 ILCS 5/3-6-3(a)(2.1) (West 2010). The State claims the trial court was correct in denying defendant's motion on this basis, as there is no evidence in the record trial counsel incorrectly advised defendant. We find the State's claim directly contradicted by the record.

¶ 35 At the hearing on defendant's motion, defendant stipulated to the allegations contained in his pleadings, and trial counsel testified he could not recall any discussion regarding the truth-in-sentencing law. Although trial counsel explained it was his "habit" to pull out his truth-in-sentencing "cheat sheet," and he would have been surprised if he had not done so, he could not definitively say whether he had done so with defendant.

¶ 36 Hearing testimony aside, trial counsel's mistake at defendant's sentencing hearing provides sufficient support for defendant's ineffective-assistance-of-counsel claim. In arguing for a lesser sentence, trial counsel stated: "I do want to point out to the Court that something that [the State] said that is markedly true here than it is in most other cases, and that is, this is a very fairly severe minimum sentence. Fifteen years is pretty severe. It is an 85[%] sentence making it even more so." The State then clarified, "This is not a case in which the defendant would be required to serve 85[%] of any sentence imposed," to which trial counsel responded, "I misspoke on that."

¶ 37 The State argues this on-the-record conversation put defendant on notice he would not be required to serve 85% of his sentence. Perhaps it did. However, because the conversation occurred at sentencing—well after defendant entered into his open guilty plea—we fail to see the State's point. Defendant's remedy was to file a motion to withdraw his guilty plea. Defendant filed such a motion; the trial court denied it. Defendant then appealed. This was the proper course of action.

¶ 38 Nevertheless, in addressing defendant's truth-in-sentencing claim, the trial court simply stated: "[T]here was never any issue raised by the defendant about the guilty plea, about whether or not—I mean, about whether or not it was 85[%.]" While we acknowledge truth-in-sentencing matters are collateral consequences of a plea and the trial court is not required to admonish a defendant regarding collateral consequences (*Delvillar*, 235 Ill. 2d at 520-21, 922 N.E.2d at 338), where a defendant has been affirmatively misled by his trial counsel—or the trial court for that matter—regarding those consequences, he is allowed to withdraw his guilty plea. See *People v. Correa*, 108 Ill. 2d 541, 552, 485 N.E.2d 307, 311 (1985) (where trial counsel affirmatively provides "unequivocal, erroneous, misleading representations" about the consequences of a plea, such advice may amount to ineffective assistance that renders a defendant's plea involuntary). Given the record before us, we conclude the trial court erred when it failed to address defendant's truth-in-sentencing claim. The court's error under these circumstances amounts to an abuse of discretion, as we find defendant set forth sufficient evidence tending to show he was misled regarding the potential ramifications had he proceeded to trial.

¶ 39 With regard to the second prong of *Strickland*, defendant argues there were serious doubts about his guilt based on the inherent inconsistency of Officer Kirk's ability to find such a small amount of cocaine on his person yet his inability to find a gun. He further maintains he had persistently adhered to his plea of not guilty and had gone so far as to select a jury. Indeed, his second motion to withdraw his guilty plea alleged he was innocent of the crimes charged and counsel's poor performance was a prime factor in his decision to plead guilty.

¶ 40 Although the State's factual basis evinced a videotaped confession, that confession is not contained in the record on appeal. Defendant argues the confession was

coerced, and should his case proceed to trial, he would be able to challenge those statements and present evidence concerning the circumstances under which the statements were made. See *People v. Melock*, 149 Ill. 2d 423, 458, 599 N.E.2d 941, 956 (1992) ("The circumstances surrounding the taking of a confession can be highly relevant to the legal question of voluntariness as well as the factual question of the defendant's guilt or innocence.").

¶ 41 The State fails to respond to defendant's argument he was prejudiced by trial counsel's misrepresentations. Rather, the State only argues defendant failed to present evidence to support his claim, which, as mentioned earlier, is not supported by the record. Accordingly, because defendant's ineffective-assistance-of-counsel claim is accompanied by a claim of actual innocence, we conclude the proper remedy is to reverse the trial court's denial of defendant's motion and to remand to allow defendant to withdraw his guilty plea and plead anew. Corollary to this is that any charges previously dismissed by the State may be reinstated. Ill. S. Ct. R. 605(b)(4) (eff. Oct. 1, 2001). In light of this holding, we need not address the viability of defendant's remaining claims.

¶ 42 III. CONCLUSION

¶ 43 We reverse the trial court's judgment and remand with directions to allow defendant to withdraw his guilty pleas for armed violence, unlawful possession of a weapon by a felon, and aggravated resisting a peace officer.

¶ 44 Reversed and remanded with directions.

¶ 45 JUSTICE TURNER, dissenting.

¶ 46 I respectfully dissent. The trial court's denial of defendant's second motion to withdraw his guilty plea on defendant's truth-in-sentencing claim was not an abuse of discretion. In his second motion to withdraw his guilty plea, defendant alleged the following: "I was also

told by my counsel that if I proceded [*sic*] to trial and was convicted that I would be facing between 15 years to 30 years at 85 percent, w[h]ich wasn't true because my case is at 50 percent. I feel that that was a tactic to get me to take the plea deal." At the evidentiary hearing on the motion, defendant did not testify and relied solely on his statements in his motion. I note the record contains no evidence trial counsel misrepresented the application of the truth-in-sentencing law as a "tactic" to pressure defendant into pleading guilty.

¶ 47 Moreover, counsel testified that, while he did not recall discussing the truth-in-sentencing law with defendant before the guilty plea, he would be surprised if he did not use his "cheat sheet," which indicated the truth-in-sentencing law did not apply to defendant's case. While trial counsel's misstatement at defendant's sentencing hearing is supporting evidence he earlier misspoke about the applicability of the truth-in-sentencing law, it does not establish unequivocally counsel misspoke three months earlier before defendant's guilty plea. In *Correa*, 108 Ill. 2d at 547-48, 485 N.E.2d at 309-10, cited by the majority (supra ¶ 38), the defense counsel admitted making statements that indicated the defendant would not be deported for pleading guilty. Further, in this case, defendant only alleged one misrepresentation as to the application of the truth-in-sentencing law. Thus, I disagree with any suggestion defendant's trial counsel made " 'unequivocal, erroneous, misleading representations.' " Supra ¶ 38 (quoting *Correa*, 108 Ill. 2d at 552, 485 N.E.2d at 311).

¶ 48 Additionally, even assuming counsel misrepresented the application of the truth-in-sentencing law to defendant before his guilty plea, defendant failed to establish the applicability of the truth-in-sentencing law was a significant consideration in his decision to plead guilty. In *Correa*, 108 Ill. 2d at 553, 485 N.E.2d at 312, our supreme court emphasized the erroneous advice was on the "crucial consequence of deportation" and the issue was a "prime

factor" in deciding to plead guilty. Here, the record does not establish whether the truth-in-sentencing law applied was a crucial consequence in defendant's case. As the circuit court noted in denying defendant's truth-in-sentencing claim, defendant never raised a question about the applicability of the truth-in-sentencing law during the guilty plea proceedings. It was a discussion about prior convictions from another state that took place prior to defendant's guilty plea. Then, in both his second motion to withdraw and his arguments on appeal, defendant's assertions focused heavily on counsel's misrepresentations as to defendant's prior convictions and the prejudice that resulted from those misrepresentations. The record suggests that, if anything, the prior convictions were the prime factor in defendant's decision, and defendant did not present any additional evidence showing the applicability of the truth-in-sentencing law was also a prime factor. Moreover, I note counsel's misstatement is not inherently prejudicial to defendant because, unlike deportation in *Correa*, the correct application of the law was actually beneficial to defendant. Accordingly, I find any misrepresentation or mistaken advice about the applicability of the truth-in-sentencing law was not, by itself, a basis for withdrawing defendant's guilty plea.