2016 IL App (1st) 140574-U

THIRD DIVISION
February 10, 2016

No. 1-14-0574

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. 09 CR 14178
	)	
DARRYL CHAFFIN,	)	Honorable
	)	Larry G. Axelrood,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Mason and Justice Fitzgerald Smith concurred in the judgment.

O R D E R

¶ 1 *Held:* The trial court did not abuse its discretion in denying defendant's motion to withdraw his guilty plea after a hearing because defendant failed to establish that he was denied the effective assistance of counsel.

¶ 2 On November 12, 2013, defendant Darryl Chaffin entered a fully negotiated plea of guilty to unlawful use of a weapon by a felon. He then filed a timely motion to withdraw the plea. Following a hearing, the trial court denied the motion and sentenced defendant to six years in prison. Defendant now appeals contending that the trial court erred in denying the motion

when defendant's plea was rendered involuntary because he was denied the effective assistance of counsel. We affirm.

¶ 3 Defendant was charged by indictment with, *inter alia,* attempted first degree murder, aggravated unlawful use of weapon, unauthorized use of a weapon by a felon, and the offense of armed habitual criminal following a July 2009, incident during which two men were shot.

¶ 4 The matter proceeded to a jury trial where defendant was represented by private counsel. The trial court began the jury selection process and then took a lunch break. After lunch, the parties informed the court that a disposition had been reached in that defendant would enter a plea of guilty to the charge of unlawful use of a weapon by a felon and would receive a six-year prison sentence with day-for-day credit. The trial court repeated that the agreement between the parties was that defendant would "get 6 years at 50 percent." The court then asked defendant if he understood the agreement and if "that" was what he wanted to do. Defendant answered both questions affirmatively.

¶ 5 The factual basis for defendant's plea was that on the afternoon of July 22, 2009, there was an altercation between Darryl Clark and defendant's two sons. After the altercation ended, Clark left the area and returned shortly thereafter with a group of individuals. A fight then broke out. During the fight, defendant possessed a firearm, specifically, a "loaded Taurus .45 caliber semi-automatic handgun." At the time that defendant possessed the gun, he had previously been convicted of the offense of unlawful use of a weapon by a felon in case number 92 CR 6991. The parties stipulated to these facts. The trial court then asked defendant if that was what he was "pleading guilty to," and defendant answered yes. The court accepted the plea.

¶ 6 The trial court then ordered a presentence investigation and continued the matter for sentencing because defendant had certain business and medical issues that needed to be addressed prior to sentencing. The court stated that it would honor the parties' agreement as to the 6-year sentence as long as defendant appeared at sentencing. However, should defendant not appear, the court was free to sentence defendant, because of his criminal history, to an extended-term sentence of between 3 and 14 years in prison. The court then recalled the venire, thanked it for its service, and dismissed it.

¶ 7 On December 12, 2013, defendant filed a motion, through new private counsel, to withdraw his plea.

¶ 8 At the hearing the motion, defendant testified that he retained attorney Tony Thedford, and that Thedford then brought attorney Chris Swanson onto the case. The case was set for a jury trial on November 12, 2013. The day before, defendant and his wife met with the attorneys to prepare for trial. At this meeting, Thedford told defendant that he could not win the case. Defendant, however, believed that he had a "winnable case" based upon the defenses of necessity and self-defense. He had previously discussed these defenses with his attorneys. Although Thedford told defendant that the State made an offer of six years, defendant rejected the offer.

¶ 9 The next day, defendant was prepared to go to trial. However, during lunch, his attorneys told him he needed to think "about taking this time." Defendant responded that he wanted to go to trial. His attorneys told him that they could not win, but defendant reiterated that he had a winnable case. Defendant ultimately agreed to plead guilty because he felt "pressured." Defendant explained that he felt pressured by his attorneys and because "the Judge is like

securely established in this courtroom." In other words, "everybody" pressured him. Although he admitted that the judge did not say anything to him directly, he thought about the possible sentences in the case. He admitted that he entered a plea of guilty and understood what he was doing, but asserted that he was pressured. Defendant believed that he could win at trial.

¶ 10 During cross-examination, defendant testified that he "somewhat" understood what he was doing, but that he felt pressured because his attorneys said they could not win. Defendant knew that it was his decision whether or not to go to trial. Although defendant had owned a successful medical supply company since 2007, he testified that his wife really runs the business and he only makes decisions four or five times a year.

¶ 11 The day before trial, he rejected the State's offer, relayed through his attorney, of six years in prison for the offense of armed habitual criminal. He denied that he rejected the offer because he would have been required to serve 85% of the sentence; rather, he rejected it because he was not "interested in receiving any time." He explained that he had saved his children's lives and wanted to go to trial. On the day of trial, he learned that the offer was seven years in prison on the unlawful use of a weapon by a felon charge to be served at 50%. Defendant understood this offer. He denied stating that he would take six years at 50%. When the offer changed to six years at 50%, defendant turned that down as well. However, he later accepted the offer in front of the trial court. He knew that he was facing attempted first degree murder charges and a minimum sentence of 62 years in prison, but he was "willing to take that chance" because he knew he could win. However, he decided to take the deal because his attorneys told him that they could not win. He acknowledged that he told the trial court that he understood the

agreement and that the guilty plea was what he wanted to do. He also told the court that he was not threatened or coerced into taking the plea. He admitted that "eventually" it was his choice to take the plea.

¶ 12 During redirect, defendant stated that he did not know that he could ask the trial court for new counsel. He wanted new counsel because his attorneys told him that they could not win the case prior to trial. Although defendant felt pressured, he never felt threatened. He explained that he felt pressured because his attorneys had "thus far" told him that the case was winnable, but then it was "like" he was going to go to court "and just get 62 years because they" told him they could not win. When the attorneys told him they could not win, he felt pressured and therefore entered a guilty plea.

¶ 13 Katrina Hood, defendant's wife, was present at the meeting at Thedford's office when Thedford told defendant that the State made an offer of seven years, and defendant rejected the offer. It was "always" defendant's intention to go to trial. At lunch the next day, Thedford told the family about a six-year offer from the State. Although defendant originally did not want to take the offer, defendant finally changed his mind. In the interim, Swanson told defendant that this deal "was the best that he could be getting" and that if defendant lost he could spend the rest of his life in prison. Hood characterized defendant as feeling "pressured like he didn't know what to do at that time." The attorneys did not raise their voices and, to her knowledge, no one threatened defendant, but they did repeat over and over that he should take the offer. Both of the attorneys stated that "they could win on some of the counts."

¶ 14 During cross-examination, Hood acknowledged that defendant's attorneys were concerned about the charges related to possession of a firearm. They talked about their evaluation of the case, whether they thought that State's offer was good, and gave defendant advice. Although Hood said that her husband entered a guilty plea under pressure, it was his choice to change his mind and accept the offer.

¶ 15 Anthony Thedford was called by the State and testified that he was retained by defendant in April 2011. In September 2013, the State made an offer of six years on the armed habitual criminal count, which would be served at 85%. The day before trial, Thedford had an "in-depth" discussion with defendant about this offer. Hood, Swanson, and defendant's sons were also present. He did not tell defendant that he could not win the case. Defendant rejected the offer and Thedford continued to prepare for trial.

¶ 16 The next morning when Thedford told the State that defendant rejected the offer, the State made a new offer of seven years on the unauthorized use of a weapon by a felon charge to be served at 50%. Thedford communicated this offer to defendant and defendant rejected it. He did not tell defendant that they could not win although he did tell defendant that he thought this was a "good offer." He did not see the previous offer of six years at 85% as a "good offer." He gave defendant his advice, *i.e.*, it was a good offer, and there was "no guarantee that we would win, no guarantee that we would lose." Thedford "certainly" gave "percentages" to defendant based upon his experience. Defendant rejected the offer and Thedford went to begin jury selection. Swanson then came to him and said that defendant was "interested in accepting a new offer." When Thedford, Swanson and defendant spoke, he learned that defendant would take a

six-year sentence at 50%. This information was communicated to the State, and defendant ultimately accepted an offer of six years on the unlawful use of a weapon by a felon charge to be served at 50%. Thedford was satisfied that defendant understood the options available.

¶ 17 During cross-examination, Thedford testified that the defense relied upon the affirmative defenses of necessity and self-defense and that during trial preparation defendant never indicated that he wanted to plead guilty. Thedford discussed the State's offer "in depth" with defendant and his family the day before trial. It was his "obligation" to discuss the offer with defendant and the "pros and cons of accepting or rejecting the offer." Defendant ultimately rejected the offer.

¶ 18 The next day, Thedford was approached at lunch and given an offer which was "essentially sweetening the pot" of the offer that had been made that morning. Defendant had "countered" with the suggestion that he would accept a six-year sentence. Defendant communicated this to Swanson, who told Thedford. Thedford then spoke to defendant who confirmed this was correct. Defendant was active in the plea negotiations and was "certainly emotional and as worn out as one can be from actively participating in discussions that will [affect] the rest of their lives." Thedford denied telling defendant that they could not win on certain counts; rather, they told defendant the counts that they were "strongest on" and those they were "weakest on." He did not say that the defense did not have a chance at trial because he is "too arrogant to say that." Instead, he talked about the evidence, what he expected the State to prove and what the defense could do in response.

¶ 19 In denying defendant's motion to withdraw the plea, the trial court found Hood to be a "person of great character and integrity" who testified that it was defendant's decision to take the

plea, that no one yelled at defendant or threatened him and that the lawyers indicated that the defense would not be able to win on some of the counts. To the court, this indicated that the attorneys were talking about the strengths and weaknesses of the case. The court found that defendant was "not a neophyte," or "somebody who has never been through the system." To the contrary, defendant ran a business and defendant's "portrayal of himself as a victim doesn't ring true." The trial court believed Thedford's testimony that it was defendant who indicated that he would take six years at 50%. The court also believed that defendant was under pressure because defendant had to make a decision, six years at 50% versus the risks of "losing and getting more" or going to trial and winning. The court stated that defendant was a convicted felon who had a weapon, and while the defenses of necessity and self-defense could address defendant shooting someone, it did not address defendant's possession of the weapon.

¶ 20 The court then reiterated that defendant did not say anything about pressure when entering his plea and that the court relied on defendant telling the truth when taking his plea. The court concluded that accepting this plea was a "pretty good decision" as it minimized defendant's risk. Ultimately, the court found that defendant "got good clear legal advice as to what his options were, and he made this decision." Therefore, the court denied the motion, and defendant was sentenced to six years in prison. Defendant now appeals.

¶ 21 A defendant's decision to enter a plea of guilty is a decision that belongs only to the defendant. *People v. Medina*, 221 Ill. 2d 394, 403 (2006). The defendant's ability to withdraw his guilty plea, however, is not an absolute right (*People v. Manning*, 227 Ill. 2d 403, 412 (2008)); rather, a defendant must show a manifest injustice under the facts involved (*People v. Hughes*,

2012 IL 112817, ¶ 32). A plea should be withdrawn if it was entered through a misapprehension of the facts or of the law or where there is doubt as to the guilt of the defendant and justice would be better served through a trial. *Id*. A trial court's decision whether to allow a defendant to withdraw a guilty plea rests within the sound discretion of the trial court and will not be disturbed absent an abuse of that discretion. *Id*.

¶ 22 Here, defendant contends the trial court erred when it denied his motion to withdraw the plea because he was denied the effective assistance of counsel. Specifically, his attorneys told him that they could not win the case and it was the pressure from these "misrepresentations of the law" that caused him to accept the State's offer.

¶ 23 To establish that counsel was ineffective, a defendant must show that counsel's performance fell below an objective standard of reasonableness and there is a reasonable probability that but for counsel's unprofessional errors the result of the proceeding would have been different. *Id.*, ¶ 44, citing *Strickland v. Washington*, 466 U.S. 668, 694 (1984). To establish the prejudice prong of an ineffective assistance of counsel claim in these circumstances, a defendant must show that there is a reasonable probability that, absent counsel's errors, the defendant would have pleaded not guilty and insisted upon going to trial. *People v. Hall*, 217 Ill. 2d 324, 335 (2005). 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. *Id*. 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. *Id*. at 335-36.

¶ 24 Here, defendant's claim of ineffective assistance of counsel must fail because he has presented no evidence of deficient representation. In other words, there was no credible evidence that anyone "pressured" defendant to accept the State's offer; rather, defendant's argument that he was pressured into accepting the State's offer was rebutted by the testimony of his wife, Thedford, and, to a certain extent, by defendant's own testimony.

¶ 25 At the hearing on the motion, Hood testified that defendant wanted to go to trial but that he ultimately changed his mind. She acknowledged that defendant's attorneys were always concerned about the charges related to possession of a firearm and that they believed they could win on some of the counts. She was present when the attorneys talked about their evaluation of the case and whether they thought that the State's offer was good. Neither man raised his voice to defendant. Ultimately, it was defendant's choice to change his mind and accept the offer.

¶ 26 Thedford testified that he relayed each offer to defendant, discussed the offers with defendant and gave his opinion as to whether the offer was "good." He acknowledged that he was "too arrogant" to ever say that the defense did not have a chance at trial, but was candid with defendant about the charges on which they were "strongest" and "weakest." Thedford characterized defendant as active but understandably emotional during the final plea negotiations. Defendant acknowledged that he knew it was his decision whether or not to go to trial. He understood the offer and what he was doing when he entered the guilty plea. He also told the trial court that he understood the agreement and that the guilty plea was what he wanted to do. Although he felt pressure to accept the offer, he was never threatened or coerced; rather it was "eventually" his choice to take the plea. Therefore, we cannot agree with defendant's

argument on appeal that counsels' actions, explaining the charges facing defendant, assessing the strength and weakness of the defense on each charge, and relaying the State's offers to defendant, were "objectively unreasonable under prevailing professional norms." See *Hughes*, 2012 IL 112817, ¶ 44.

¶ 27 Because defendant has failed to establish the deficiency prong of the *Strickland* test, we need not consider the prejudice prong. See *People v. Irvine*, 379 Ill. App. 3d 116, 131 (2008). Defendant's claim of ineffective assistance of counsel must therefore fail. See *People v. Clendenin*, 238 Ill. 2d 302, 317-18 (2010) (the failure to establish either prong of the *Strickland* test is fatal to a claim of ineffective assistance of counsel).

¶ 28 Accordingly, because defendant admitted at the hearing on the motion to withdraw the plea that he never felt threatened or coerced and that it was his choice to eventually accept the State's offer, he has failed to demonstrate that withdrawal of his guilty plea was necessary to correct a manifest injustice based on the facts of the case (see *Hughes*, 2012 IL 112817, ¶ 32). Therefore, we cannot say that the trial court's denial of defendant's motion to withdraw the plea was an abuse of discretion. *Id*.

¶ 29 Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 30 Affirmed.