2018 IL App (1st) 160159-U
No. 1-16-0159
Order filed December 10, 2018

First Division



IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the Circuit Court of |
| | ) | Cook County. |
| Plaintiff-Appellee, | ) | |
| | ) | No. 15 DV 20073 |
| v. | ) | |
| | ) | Honorable Callie L. Baird, |
| BETH HARRIS, | ) | Judge presiding. |
| | ) | |
| Defendant-Appellant. | ) | |

JUSTICE GRIFFIN delivered the judgment of the court.
Presiding Justice Mikva and Justice Walker concurred in the judgment.

**ORDER**

¶ 1 *Held*: The trial court did not abuse its discretion when it denied defendant's motion to withdraw her guilty plea.

¶ 2 Defendant Beth Harris appeals from the trial court's denial of her motion to withdraw her guilty plea. On appeal, she contends that her guilty plea was not knowing and voluntary because she was "factually innocent" and not in the proper state of mind to understand the plea. We affirm.

¶ 3 On June 30, 2014, the trial court entered a two-year "agreed" order of protection in case number 12 MC 2000149 on behalf of Cora Galbreath and against defendant. Defendant's

children, J.H. and T.H., were also listed as protected parties. The order of protection ordered defendant to, in pertinent part, stay away from the protected parties as well as whatever school T.H. attended. The order of protection is stamped "respondent served in open court."

¶ 4 On February 25, 2015, the State sought leave to file a complaint charging defendant with a violation of the order of protection. Evanston Police Detective Clara Just testified that she had spoken with an Officer Blumenberg regarding Galbreath, and the fact that Galbreath had an order of protection against defendant which prohibited contact.[1] Just further testified that Officer Blumenberg stated that he observed defendant say " 'f*** you' " to Galbreath while driving away from T.H.'s school. T.H. was also present. The trial court granted the State leave to file the complaint.

¶ 5 Following an April 22, 2015 conference held pursuant to Supreme Court Rule 402 (eff. July 1, 2012), defendant entered a plea of guilty to a violation of an order of protection, and was sentenced to one year of conditional discharge. In exchange for the plea, the State agreed to *nolle prose* a "newer" violation of the order of protection and a charge of harboring a runaway.

¶ 6 Before accepting the plea, the trial court asked defendant, whether having heard the State explain the agreement, if that was defendant's understanding of the agreement and defendant answered yes. The trial court then explained the offense with which defendant was charged and the applicable sentencing range, and asked defendant how she wished to plead. Defendant stated that she wished to plead guilty. The trial court next asked defendant whether anyone threatened or promised her anything, other than the agreement with the State, to get her to enter a plea, and

[1] Officer Blumenberg's given name is not listed in the transcript.

she answered no. The court finally asked defendant whether she was entering the guilty plea of her own free will and defendant answered yes.

¶ 7 The State then presented the factual basis for plea, that is, on December 16, 2014, defendant violated an order of protection in case number 12 MC 2000149 when, having notice of the contents of the order, she went to the protected address, her son's school, and proceeded to yell obscenities at a protected person, Galbreath. The defense agreed "that would be the testimony." The trial court found that there was a factual basis for the plea, entered a guilty finding, and sentenced defendant to one year of conditional discharge. The court then admonished defendant regarding her appeal rights.

¶ 8 On May 22, 2015, defendant appeared before the trial court *pro se* and indicated that she wished to "request" a motion to vacate her guilty plea. The trial court characterized her request as an oral motion to reconsider, and stated that a written motion within 30 days was required. Defendant then wrote a motion and presented it to the court. Defendant's "motion to reconsider" stated that she was "factually innocent" and "advised neglectfully by counsel." The court then appointed counsel. Counsel filed a motion to withdraw the plea and vacate the judgment alleging, *inter alia,* that defendant was "factually innocent," was not in a "frame of mind" to voluntarily enter a plea as she was suffering from depression and under the care of physician, and was not give the information necessary to make an informed and knowing decision.

¶ 9 At the hearing on the motion, defendant stated that during mediation in juvenile court, it was agreed "off the record" that defendant could be at her children's schools, that she therefore believed that she could be there and that she had been to her children's schools many times. The court asked the parties whether they could provide the court with something from the juvenile

court that indicated an "agreement or recommendation" that defendant could be at her children's schools. Defendant told the court that proceedings in juvenile court were "very much off the record" and "very much implied." Defendant then stated that in October 2014, Galbreath agreed "off the record" that defendant was "allowed" at the schools. Defendant explained that the December 2014 incident arose when she tried discipline T.H., and T.H. contacted Galbreath. Defendant asserted that it was Galbreath who "caused the scene" in front of a police officer.

¶ 10 The trial court replied that although defendant indicated that Galbreath told her in October 2014, "off the record," that she could be at the schools, Galbreath remained a protected party under the order of protection. As Galbreath was "at the school on a regular basis" she was "entitled" to that location being a "protected location."

¶ 11 Turing to defendant's motion to withdraw the plea, the court noted that counsel consulted with defendant at each court date, that on the date of the plea defendant had a "long opportunity" to speak with counsel, and that defendant spoke up at every court date if there was something that she did not agree with. The court noted that there was "nothing" to support the claims raised in defendant's motion to withdraw the plea and that even if defendant was under a physician's care at the time that she entered the plea, there was no evidence to show that she did not knowingly and voluntarily enter the plea. The court finally noted that when it gave defendant the opportunity to "speak up," defendant indicated on the record that she understood the charges.

¶ 12 Defendant replied that she was hysterical, crying and shaking at the plea hearing. She then stated that she took pills for anxiety and was "clearly having an anxiety attack on that day." The court agreed that defendant was crying and upset at the plea hearing, as it involved her children. However, defendant indicated that she understood the charge and the maximum and

minimum penalties and that she wished to enter a guilty plea. The trial court concluded that defendant understood "what was going on," and denied the motion to withdraw the plea.

¶ 13 On appeal, defendant contends that the trial court erred when it denied her motion to withdraw the plea because her plea was not knowing and voluntary. She argues that she did not intend to violate the order of protection when she did not fully understand her visitation rights under it, and was not in the proper state of mind to "completely understand" the consequences of the guilty plea.

¶ 14 A defendant does not have an automatic right to withdraw a previously entered plea of guilty. *People v. Delvillar*, 235 Ill. 2d 507, 520 (2009). Rather, she must seek the trial court's leave to withdraw the plea, and must show "a manifest injustice under the facts involved." *People v. Pullen*, 192 Ill. 2d 36, 39-40 (2000). When faced with a motion to withdraw a guilty plea, a court must decide whether the defendant entered the plea due to "a misapprehension of the facts or of the law" or whether "there is doubt of the guilt of the accused and the ends of justice would better be served by submitting the case to a trial." *Id*. at 40. An assertion of innocence, without factual substance, is insufficient to require the withdrawal of a guilty plea when a defendant was adequately informed of the nature of the charges and the consequences of the plea. *People v. Dumas*, 50 Ill. App. 3d 637, 641 (1977).

¶ 15 The trial court has the discretion to grant or deny a motion to withdraw a guilty plea. *Delvillar*, 235 Ill. 2d at 519. On appeal, the denial of such a motion is reviewed for an abuse of discretion. *Id.* An abuse of discretion occurs when a court's decision is arbitrary, fanciful, or when no reasonable person would agree with the trial court's position. *People v. Becker*, 239 Ill. 2d 215, 234 (2010).

¶ 16 Defendant first argues her guilty plea should be vacated because she is "factually innocent." She argues that because Galbreath gave her permission to go to T.H.'s school and because she had done so numerous times without incident, she did not know that such visits violated the order of protection. She concludes that her lack of "intent" is a meritorious defense and renders her actually innocent. We disagree.

¶ 17 Supreme Court Rule 402(c) (eff. July 1, 2012), provides that a trial court shall not enter a final judgment on a guilty plea without first determining that there is a factual basis for the plea. However, unlike a trial, proof beyond a reasonable doubt of all elements of the offense is not required to establish a factual basis for a guilty plea. *People v. Bassette*, 391 Ill. App. 3d 453, 456-57 (2009). "The factual basis can be established by several means, including the State's summary of testimony and evidence which it would have presented at trial [citation], or defendant's own admissions." *People v. Calva*, 256 Ill. App. 3d 865, 872 (1993). There is a sufficient factual basis as long as there is a basis anywhere in the record up to the final judgment from which the trial court could reasonably conclude that the defendant actually committed the acts with the intent, if any, required to constitute the offense to which she is pleading guilty. *People v. Brazee*, 316 Ill. App. 3d 1230, 1236 (2000).

¶ 18 In the case at bar, defendant does not contest that she had knowledge of the contents of the order of protection, that she went to T.H.'s school on December 14, 2016 or that T.H. and Galbreath were present. Moreover, the order of protection at issue is stamped "respondent served in open court." Accordingly, for purposes of the guilty plea, these factual assertions provided a sufficient basis to establish the elements of a violation of the order of protection. See 720 ILCS 5/12-3.4(a) (West 2014) (a person violates an order of protection when she knowingly commits

an act which was prohibited by a court in violation of a remedy contained in a valid order of protection and such violation occurred after she was served with notice of the contents of the order or had otherwise acquired actual knowledge of the order's contents).

¶ 19 We are unpersuaded by defendant's argument that she is actually innocent for several reasons. First, although defendant argues that she did not have the intent to violate the order of protection because Galbreath had previously given her permission to visit the school, she points to nothing in the record to support her argument that the order of protection was modified prior to December 2014. It is defendant's burden, as the appellant, to provide a sufficiently complete record so that this court has an adequate basis for reviewing the trial court's judgment. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156-57 (2005). If any doubts arise due to the absence of a complete record on appeal, we will resolve those doubts against the appellant and in favor of the validity of the trial court's rulings. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). See also *People v. Fernandez*, 344 Ill. App. 3d 152, 160 (2003) ("any doubts arising from the incompleteness of the record will be construed against defendant, whose responsibility it was as appellant to present a complete record on review"). Second, defendant cites no authority for the proposition that a protected party may unilaterally modify an order of protection. In other words, even assuming that Galbreath gave defendant permission to be at the children's schools, that permission, in and of itself, did not modify the order of protection. If Galbreath wished to modify the order of protection, *i.e.*, a court order, the proper way to do so was to seek a modification from the issuing court.

¶ 20 Defendant next argues that her plea was not voluntary because at the time of her plea she was "visibly upset" and had been diagnosed with depression. Although defendant acknowledges

that "emotional upset" does not render a guilty plea involuntary when a defendant understands the rights she was waiving after being thoroughly admonished by the trial court and still enters a plea (see *People v. Bennett*, 82 Ill. App. 3d 596, 600-01 (1980)), she argues that due to her emotional distress she did not have a full understanding of "what she was agreeing to."

¶ 21 We are unpersuaded by defendant's contention that she was so emotionally distraught that she was unable to voluntarily enter a guilty plea. "Every defendant is presumed to be fit to stand trial, or to plead, and be sentenced." *People v. Jamison*, 197 Ill. 2d 135, 152 (2001). "A defendant is fit *** unless a mental or physical problem renders [her] unable to understand the nature and purpose of the proceedings against [her] or to aid in [her] defense." *People v. Stokes*, 333 Ill. App. 3d 655, 660 (2002). When a defendant claims that she was unfit, she has the burden to prove that when she entered her guilty plea, " 'there were facts in existence which raised a real, substantial and legitimate doubt as to [her] mental capacity to meaningfully participate in [her] defense and cooperate with counsel.' " *People v. Moore*, 408 Ill. App. 3d 706, 710 (2011) (quoting *People v. Eddmonds*, 143 Ill. 2d 501, 518 (1991)). Such facts include, *inter alia*, a defendant's behavior and demeanor and any representations made by counsel regarding her competence. *Id*. at 711.

¶ 22 Here, the record does not support defendant's assertion that she could not meaningfully understand her plea. The transcript from the plea hearing reveals that the trial court questioned defendant regarding her understanding of the plea agreement, whether she wished to enter a plea and whether anyone threatened or promised her anything in order to secure the plea. Defendant's answers indicated that she understood the plea agreement and was entering a guilty plea of her own free will. At the hearing on defendant's motion to withdraw the plea, the trial court noted

that on the day of the plea defendant had a "long opportunity" to speak with counsel, and when defendant was given the opportunity to "speak up," defendant indicated on the record that she understood the charges. The court acknowledged that defendant cried and was upset at the plea hearing, but noted that the matter involved defendant's children. Ultimately, the mere fact that defendant was depressed or upset at the time of her plea did not render her unfit to plead when the trial court admonished defendant regarding the plea and defendant indicated that she understood and was entering the plea willingly. See *Jamison*, 197 Ill. 2d at 157-58 ("all of the psychiatric evidence indicated that defendant, though he suffered from depression, was able to comprehend the consequences of his decision to plead guilty"); *Bennett*, 82 Ill. App. 3d at 601 ("emotional upset" does not render a guilty plea involuntary when a defendant understands the rights she is waiving after being thoroughly admonished and still enters a guilty plea).

¶ 23 Accordingly, we conclude that the trial court did not abuse its discretion when it denied defendant's motion to withdraw her guilty plea. *Delvillar*, 235 Ill. 2d at 519. We therefore affirm the judgment of the circuit court of Cook County.

¶ 24 Affirmed.