

2018 IL App (1st) 161598-U

No. 1-16-1598

Order filed January 16, 2019

Third Division

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	Nos. 12 CR 16337
)	13 CR 16690
WYMAN SCOTT,)	
)	Honorable
Defendant-Appellant.)	Matthew E. Coghlan,
)	Judge, presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court's denial of defendant's motion to vacate his guilty plea affirmed where his plea was entered knowingly and voluntarily, and was not based on a misapprehension of law or fact.

¶ 2 Defendant Wyman Scott appeals from an order of the circuit court of Cook County denying his motion to withdraw his guilty plea. On appeal, defendant contends that the trial court erred when it denied his motion because his guilty plea was based on the misapprehension that

he was eligible for impact incarceration when he was not, which rendered his plea unknowing and involuntary. We affirm.

¶ 3 Defendant was charged with multiple offenses in three unrelated cases. In case number 12 CR 16337, defendant was charged with one count of unlawful use or possession of a weapon by a felon (UUWF). In case number 13 CR 16690, defendant was charged with two counts of aggravated fleeing or attempting to elude a peace officer, two counts of aggravated battery of a peace officer, three counts of resisting or obstructing a peace officer, and four counts of felony driving with a suspended or revoked driver's license. In case number 14 CR 3817, defendant was charged with one count of aggravated fleeing or attempting to elude a peace officer.

¶ 4 On July 29, 2015, the date set for trial, defendant requested a plea conference pursuant to Supreme Court Rule 402 (eff. July 1, 2012). Defendant agreed to accept the plea offer.

¶ 5 At the plea hearing, defendant agreed to plead guilty to the UUWF charge in 12 CR 16337, and one count each of aggravated fleeing and aggravated battery of a peace officer in 13 CR 16690. The trial court advised defendant that he would be sentenced to three years' imprisonment for each offense. The sentences for the two offenses in 13 CR 16690 would be served concurrently, and consecutive to the sentence in 12 CR 16337, for an aggregate sentence of six years' imprisonment. The court stated that it "would make a recommendation of impact incarceration or boot camp." The court also advised defendant that he would be required to serve a two-year term of mandatory supervised release after being released from prison, and would be assessed fines and court costs. In exchange for his guilty plea, the State agreed to nol-pros the remaining counts in 13 CR 16690, and the charge in 14 CR 3817. Defendant confirmed that was his understanding of the plea agreement.

¶ 6 The trial court read the three charges to defendant. After each charge, defendant pled guilty. The court verified that defendant understood that he was foregoing certain rights by pleading guilty, including the right to a trial. Defendant affirmed that he understood that for the UUWF and aggravated battery charges, he could be sentenced to between 3 and 14 years in prison for each offense, and for the aggravated fleeing charge he could be sentenced to an extended term of 2 to 10 years in prison. Defendant could also be fined up to \$25,000 on each charge. Defendant confirmed that he understood that the prison sentences for the two cases must run consecutive to each other because the charges in the second case were committed while he was out on bond on the first case. He therefore faced a minimum of 6 years and a maximum of 28 years in prison. Defendant denied that anyone had forced or threatened him to plead guilty, and testified that he was pleading guilty of his own free will.

¶ 7 The trial court stated:

“I want to tell you something about the boot camp. The Court can make the recommendation for you to participate in the Illinois Department of Corrections Impact Incarceration Program or boot camp. However, the Illinois Department of Corrections is not required to follow this recommendation.

If the Illinois Department of Corrections does not follow this recommendation or if you are terminated from the program, you will have to serve the term of imprisonment less than the actual time spent in custody plus the required mandatory supervised release.”

¶ 8 Defendant confirmed that he understood everything the court had said, that he still wished to participate in boot camp, and he still wished to plead guilty. The parties stipulated that

the facts presented during the plea conference were sufficient to support guilty findings on the charges. The trial court found that defendant made his plea freely and voluntarily. The court accepted the plea and entered a guilty finding on each of the three charges.

¶ 9 For sentencing, the parties rested on the information discussed during the plea conference. Defendant declined to make a statement of allocution. Pursuant to the agreement, the trial court sentenced defendant to three years' imprisonment for each offense with a "recommendation of impact incarceration." The court granted the State's motion to nol-pros the remaining counts of 13 CR 16690 and the charge in 14 CR 3817. The court admonished defendant of his appeal rights. The court then asked defendant if there was anything about the plea proceeding that he did not understand. Defendant replied "[n]o."

¶ 10 Defendant filed a timely *pro se* motion to withdraw his guilty plea that was prepared by plea counsel, William Murphy, as a courtesy. The motion stated that counsel in Murphy's office, Nicholas Kournetas, called the Hill Correctional Center regarding defendant's boot camp status and was told that defendant "was not approved for Boot Camp due to the nature of the charges he entered a plea of guilty [*sic*]." The motion stated that defendant understood that upon pleading guilty he would be admitted to the boot camp program, and therefore, he did not make his plea knowingly. Murphy filed a motion to withdraw as counsel stating that a conflict had arisen in their attorney-client relationship.

¶ 11 At the initial status hearing on the motions, the following colloquy occurred:

“THE DEFENDANT: I was under the impression that I was going to boot camp.

THE COURT: All right.

THE DEFENDANT: And they denied the boot camp.

THE COURT: Well, we'll order a copy of the transcript from the plea. I'm pretty sure that when you pled guilty, I told you that the Department of Corrections could refuse the recommendation. If that happened, you would have to serve the sentence. We'll order the plea and the transcript and we will see whether or not you were fully admonished and then we'll go from there.

MR. MURPHY: Just for the record, when his boot camp was rejected, it wasn't because he had boot camp before. The Department of Corrections said it was rejected because he had pled guilty to a fleeing and eluding which made him a threat for escape. Mr. Kournetas appealed that and asked for another discussion with the Department of Corrections and they rejected us for the same reason the second time.

THE COURT: Okay.

THE DEFENDANT: That's the only reason that I was under the impression that I could have went to the boot camp for the charges that I copped out to, so that's the only reason I signed the plea, I was informed that I could go to the boot under the charges."

The trial court continued the motions for defendant to hire a new lawyer. On the next court date, Travis Richardson represented defendant, and the court allowed Murphy to withdraw.

¶ 12 Defendant filed an amended motion to withdraw his guilty plea. Defendant asserted that after the plea conference, Murphy told him that if he pled guilty, the court would sentence him to prison with a recommendation for boot camp. Defendant told Murphy that he was previously sentenced to boot camp for a 2009 case in which Murphy represented him. Murphy assured defendant that he could participate in boot camp twice, as long as he passed the physical. Based on Murphy's assurances, defendant pled guilty and was sentenced to prison with a

recommendation for boot camp. When he arrived at the prison, defendant was told that he could not participate in boot camp because he previously participated in the program. Defendant stated that he entered his plea with the understanding that he would be given an opportunity to be admitted to boot camp, and therefore, he did not make his plea knowingly.

¶ 13 At the hearing on defendant's motion, Murphy testified that he represented defendant in a 2009 case that resulted in a plea deal that included a recommendation for boot camp. During the plea negotiations for the current cases, Murphy was aware that defendant previously participated in, and successfully completed, boot camp. Defendant told Murphy that the reason he was accepting the plea offer was because it included a recommendation for boot camp. On the day of the plea, Murphy made two calls to the Illinois Department of Corrections (IDOC) to see if defendant was eligible for boot camp. Murphy told IDOC that defendant had previously participated in the program. Murphy testified "[t]hey said he could get in boot camp; they didn't guarantee he would get in boot camp, but they said, yes, he would be eligible." When Murphy learned that defendant was denied boot camp, representatives from his office called the prison and asked why. IDOC said defendant was rejected because he was twice rendered a flight risk because of the fleeing and eluding charges. Pursuant to Murphy's request, the prison reconsidered defendant's recommendation, but again denied him.

¶ 14 On cross-examination, Murphy testified that the reason he called IDOC was to see if defendant was eligible for boot camp knowing that he had already participated in the program once. In his experience, Murphy had known IDOC to accept defendants for boot camp on a case-by-case basis who would otherwise not be considered acceptable. Murphy told defendant that boot camp was not guaranteed, and that the court's sentence was merely a recommendation.

¶ 15 Defendant testified that he was supposed to be sentenced to boot camp, and that he accepted the plea offer specifically for that reason. He acknowledged that he was sentenced to a term of imprisonment, and that other charges were dismissed. Defendant told Murphy that he previously participated in boot camp. Murphy told him that if he passed the physical he could participate in the program again. Defendant testified that counsel (he did not specify which counsel) told him that he was denied boot camp because he previously participated in the program. If there was no recommendation for boot camp, or if he knew he was going to be rejected by the program, defendant would not have accepted the plea offer.

¶ 16 On cross-examination, defendant testified that he did not recall the trial court admonishing him that it could recommend boot camp, but that IDOC was not required to follow the recommendation. Nor did he recall the court stating that if he was not accepted to boot camp that he would be required to serve his term of imprisonment. Pursuant to questioning from the court, defendant testified that Murphy never told him that he might not receive boot camp.

¶ 17 In closing, the State argued that defendant's motion to withdraw his guilty plea should be denied because the court had admonished him that boot camp was a recommendation, but that it was not a guarantee that he would be accepted into the program. It further argued that Murphy was given assurances by IDOC that defendant could be considered for the program, and was told defendant was denied because he was a flight risk. Defense counsel argued that defendant was not eligible for boot camp due to his prior participation, and therefore, the State's offer that included boot camp was a nullity because defendant could not receive the benefit of that bargain.

¶ 18 The trial court noted the conflicting testimony as to the reason why defendant was rejected by the boot camp program, and asked the parties to contact IDOC to try to determine the

actual reason. When court resumed, the State informed the court that the records department at the prison indicated that defendant was rejected for two reasons: (1) because he was a flight risk due to the aggravated fleeing and eluding charge, and (2) because he previously participated in the boot camp program. Defense counsel stated that a counselor informed him that defendant was rejected due to his previous participation.

¶ 19 The trial court found that it was not necessary to determine the actual reason for the rejection. The transcript from the plea hearing showed that the court fully admonished defendant that it could recommend boot camp, but that IDOC was not required to follow that recommendation, and defendant would then be required to serve the prison term. The court stated that defendant was aware that IDOC could reject him for any number of reasons. The court quoted the statute which provides the eligibility requirements to participate in boot camp, one of which states “[t]he person has not previously participated in the impact incarceration program and has not previously served more than one prior sentence of imprisonment for a felony in an adult correctional facility.” 730 ILCS 5/5-8-1.1(b)(2) (West 2014). The court explained “I read that word ‘and’ meaning that both of those conditions need to be met before you would be statutorily ineligible for the program.” The State confirmed that defendant was sentenced to prison only once in the 2009 case where he was sentenced to prison, but received boot camp.

¶ 20 The court found that although defendant previously participated in the program, he had not served more than one prior term of imprisonment, and therefore, he was “technically” eligible for boot camp. Consequently, the court found that Murphy’s advice to defendant that he was eligible was not erroneous, and did not constitute ineffective assistance. The court further found that because defendant was eligible, the court could make the recommendation. The court

concluded that because defendant was “technically statutorily eligible for the program,” he failed to satisfy his burden that he pled guilty under a misapprehension of law or fact. Accordingly, the court denied defendant’s motion to withdraw his plea.

¶ 21 On appeal, defendant contends that the trial court erred when it denied his motion to withdraw his guilty plea because his plea was based on the misapprehension that he was eligible for boot camp when he was not, which rendered his plea unknowing and involuntary. Defendant maintains that his prior participation in boot camp rendered him statutorily ineligible for further participation. Defendant claims that the boot camp recommendation was an illusory promise designed to induce him to plead guilty, and without the recommendation, he would not have accepted the plea offer.

¶ 22 The State responds that the trial court properly denied defendant’s motion to withdraw his guilty plea because defendant was advised by the court and Murphy, and he therefore knew, that there was no guarantee he would be accepted into the boot camp program. The State argues that the trial court correctly interpreted the statute when it found that defendant was technically eligible for boot camp. It also argues that defendant was rejected by the program because he was a flight risk. The State asserts that defendant’s subjective belief that he was going to be accepted to boot camp is not a misapprehension of law, and thus, not grounds for vacating his plea.

¶ 23 The determination to grant or deny a defendant’s motion to withdraw his guilty plea rests in the trial court’s sound discretion and will not be disturbed on review absent an abuse of that discretion. *People v. Hughes*, 2012 IL 112817, ¶ 32. An abuse of discretion will be found only where the trial court’s ruling is unreasonable, fanciful, arbitrary, or where no reasonable person would agree with the court’s view. *People v. Delvillar*, 235 Ill. 2d 507, 519 (2009).

¶ 24 Defendant does not have an absolute right to withdraw his guilty plea, but instead, he must establish a manifest injustice under the facts of the case. *Hughes*, 2012 IL 112817, ¶ 32. The trial court's ruling will not be disturbed unless defendant's plea was entered through a misapprehension of the law or facts, or if there is any doubt as to his guilt and justice would be better served by proceeding to trial. *Id.* It is defendant's burden to demonstrate that a misapprehension of the law or facts occurred. *Delvillar*, 235 Ill. 2d at 520.

¶ 25 Boot camp, formally known as IDOC's impact incarceration program (730 ILCS 5/5-8-1.1 (West 2014)), is a legislatively enacted program designed to be a substitute for a defendant's imprisonment. *People v. Manoharan*, 394 Ill. App. 3d 762, 770 (2009). Although the trial court may recommend a defendant for participation in the boot camp program, it is within IDOC's discretion to accept him into the program. *Id.* IDOC has discretion to exclude a defendant from participating in boot camp "for any number of reasons." *Id.*

¶ 26 To be eligible to participate in boot camp, defendant was required to meet eight enumerated statutory requirements. See 730 ILCS 5/5-8-1.1(b) (West 2014). The requirement at issue in this case, quoted by the trial court above, provides: "[t]he person has not previously participated in the impact incarceration program and has not previously served more than one prior sentence of imprisonment for a felony in an adult correctional facility." 730 ILCS 5/5-8-1.1(b)(2) (West 2014). Applying the plain meaning to the language in the statute, the trial court found that defendant had to meet both conditions of subsection (b)(2) to be deemed statutorily ineligible to participate in boot camp. Defendant disagrees, and emphasizing the language of the first condition, asserts that the statute clearly states that a person who has previously participated in the program is not eligible to participate a second time.

¶ 27 The interpretation of a statute is a question of law which we review *de novo*. *People v. Simpson*, 2015 IL 116512, ¶ 29. The primary objective of statutory interpretation is to ascertain and give effect to the intent of the legislature. *Id.* The most reliable indicator of the legislature's intent is the language of the statute, given its plain and ordinary meaning. *Id.* A court must analyze a statute as a whole, construing words and phrases in light of other relevant statutory provisions rather than in isolation. *People v. Smith*, 2016 IL 119659, ¶ 27. Each word, clause and sentence of a statute must be given reasonable meaning and should not be rendered superfluous. *Id.* We will not depart from the plain language of the statute by reading into it limitations, exceptions, or conditions which the legislature did not express. *Id.* When the language of the statute is clear and unambiguous, it must be applied as written, without resort to extrinsic aids of statutory construction. *Id.*

¶ 28 “It is well settled that, generally, the use of a conjunctive such as ‘and’ indicates that the legislature intended that *all* of the listed requirements be met.” (Emphasis in original.) *In re M.M.*, 2016 IL 119932, ¶ 21. Although courts have sometimes construed “and” to mean “or” and vice versa, this occurs only in cases where there is an apparent inconsistency or repugnance in a statute that would defeat its main purpose and intent. *Id.* “When these words are found in a statute and their accurate reading does not render the sense dubious they should be read and interpreted as written in the statute.” (Internal quotation marks omitted.) *Id.*

¶ 29 Applying these rules of statutory interpretation, when giving the language of subsection (b)(2) its plain and ordinary meaning, we find that the trial court correctly determined that both conditions of the requirement must be met for defendant to be statutorily ineligible to participate in boot camp. In other words, defendant must not have previously participated in boot camp, *and*

he must not have previously served more than one prior prison sentence for a felony in an adult correctional facility. If we were to interpret the statute as defendant suggests, and found that his previous participation in the program alone barred him from further participation, the language comprising the second condition of the requirement would be rendered completely meaningless and superfluous. *Smith*, 2016 IL 119659, ¶ 27. Had the legislature intended that defendant's previous participation in the program, in and of itself, would preclude him from ever participating in the program again, it would have listed that specific consideration as a separate eligibility requirement, as it did with several of the other requirements in the statute. See, e.g., 730 ILCS 5/5-8-1.1(b)(1) (West 2014) ("The person must be not less than 17 years of age nor more than 35 years of age."); (b)(4) ("The person has been sentenced to a term of imprisonment of 8 years or less.").

¶ 30 We note that when the impact incarceration statute was enacted in 1990, the original language of subsection (b)(2) provided "[t]he person has never served a sentence of imprisonment for a felony in an adult correctional facility." Ill. Rev. Stat. 1990, ch. 38, ¶ 1005-8-1.1(b)(2). The statute was amended to the present language in 1993. Pub. Act 88-311 § 15 (eff. Aug. 11, 1993). The amended language demonstrates that the legislature made a specific decision to provide the opportunity to participate in boot camp to many more defendants who were previously barred from participation due to one prior term of imprisonment.

¶ 31 Moreover, the record shows that defendant was not found ineligible based solely on his previous participation in boot camp. Defendant's original motion to withdraw his plea, prepared by Murphy, stated that defendant was not approved for boot camp due to the "nature of the charges" to which he pled guilty. At the initial status hearing on that motion, Murphy informed

the court “when his boot camp was rejected, it wasn’t because he had boot camp before. The Department of Corrections said it was rejected because he had pled guilty to a fleeing and eluding which made him a threat for escape.” Murphy’s office appealed that decision, but IDOC “rejected us for the same reason the second time.” At the hearing on defendant’s amended motion to withdraw his plea, Murphy testified that on the day of the plea, he called IDOC twice to see if defendant was eligible for boot camp, and specifically told IDOC that defendant had previously participated in the program. Murphy testified “[t]hey said he could get in boot camp; they didn’t guarantee he would get in boot camp, but they said, yes, he would be eligible.” Murphy again testified that IDOC informed him that defendant was rejected from the program because he was twice rendered a flight risk due to his fleeing and eluding charges. In addition, pursuant to the court’s request, the State contacted the records department at the prison to determine the reason for defendant’s rejection from the program. The prison official informed the State that defendant was rejected for two reasons: (1) because he was a flight risk due to the aggravated fleeing and eluding charge, and (2) because he previously participated in boot camp.

¶ 32 The impact incarceration statute is clear. It provides “the court may in its sentencing order approve the offender for placement in the impact incarceration program *conditioned upon his acceptance in the program by the Department.*” (Emphasis added.) 730 ILCS 5/5-8-1.1(a) (West 2014). In addition to the eight enumerated requirements for eligibility, IDOC may also consider several other factors including space availability, whether the defendant has any outstanding warrants, whether he poses a safety or security risk, and “whether the committed person has a history of escaping or absconding.” 730 ILCS 5/5-8-1.1(b) (West 2014). The record clearly shows that IDOC, within its discretion, rejected defendant’s request to participate in boot

camp based on its concern that he was a flight risk due to his charges for aggravated fleeing and eluding the police.

¶ 33 The trial court thoroughly admonished defendant that a recommendation for boot camp was the extent of the plea agreement, and that there was no guarantee that IDOC would accept him into the program. The court also admonished defendant that if IDOC did not accept him for boot camp, defendant would be required to serve his six-year term of imprisonment, which was the minimum possible term he faced had he gone to trial. Defendant's mistaken subjective impression that he was going to boot camp rather than prison is not a sufficient basis upon which to vacate his guilty plea. See *People v. Spriggle*, 358 Ill. App. 3d 447, 451 (2005).

¶ 34 Based on this record, we find that defendant was eligible for recommendation and consideration for boot camp, which he received in accordance with the plea agreement. Consequently, defendant has failed to meet his burden to establish that he entered into his guilty plea based on a misapprehension of fact or law, and therefore, no manifest injustice occurred. Accordingly, the trial court did not abuse its discretion when it denied defendant's motion to withdraw his guilty plea.

¶ 35 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 36 Affirmed.