

No. 1-12-2088

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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|--------------------------------------|---|-------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the   |
|                                      | ) | Circuit Court of  |
| Plaintiff-Appellee,                  | ) | Cook County.      |
|                                      | ) |                   |
| v.                                   | ) | No. 09 CR 13323   |
|                                      | ) |                   |
| ISIAH JOHNSON,                       | ) | Honorable         |
|                                      | ) | Thomas M. Tucker, |
| Defendant-Appellant.                 | ) | Judge Presiding.  |

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JUSTICE HOFFMAN delivered the judgment of the court.  
Presiding Justice Connors and Justice Delort concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Court did not err in denying motion to withdraw negotiated guilty plea; defendant was not deprived of benefit of bargain by statutory requirement to serve 85% of prison sentence. It is reasonable to conclude that the court properly referred to 85% rather than 80% as a transcript shows, and defendant clearly demonstrated knowledge that 85% rather than 80% applied.

¶ 2 Pursuant to a negotiated guilty plea, defendant Isiah (also known as Isaiah) Johnson was convicted of aggravated battery with a firearm and sentenced to 21 years' imprisonment. Defendant appeals from the denial of his motion to withdraw his plea. On appeal, he contends

that he must be allowed to withdraw his plea or have his sentence reduced when he was promised that he would serve 80% of his prison sentence while the law requires that he serve at least 85%.

¶ 3 Defendant was charged with attempted first degree murder, aggravated battery with a firearm, and aggravated discharge of a firearm for, on or about June 9, 2009, shooting at Daniel Martinez with a firearm and thereby injuring him.

¶ 4 On April 14, 2010, at defendant's behest, a plea conference, was held pursuant to Supreme Court Rule 402(d) (eff. July 1, 2012). Following the conference, the court spread of record that defendant faced at least 31 years' imprisonment for attempted murder with injury by firearm but trial counsel had asked the State for 21 years. Defendant stated that he "will think about it" and a recess was held. After recess, counsel asked the court if defendant could plead that day and be sentenced later. The court described the sentencing range for aggravated battery with a firearm, with the transcript in the record on appeal showing the court saying "it is 80 percent that you have to serve on the sentencing." Defendant entered a plea of guilty, and the court proceeded through the requisite admonishments and waivers, including of defendant's right to a jury trial and to a pre-sentencing investigation, and heard the factual basis for the plea. The court expressly found great bodily harm from the offense, noted that all other charges would be nol prossed, and continued the case to May 6 for sentencing. That same day, defendant signed an acknowledgement of his appeal rights.

¶ 5 Later in April 2010, defendant filed a *pro se* motion to withdraw his plea, claiming that counsel (1) promised to file a motion to suppress identification but did not, and (2) misled him into believing that he "would receive 21 years at 50% and that this is the best deal ever, [when] the actual sentence will be 21 years at 85%." Defendant expressly alleged that he "would never have agreed to this plea agreement if he was not misled by counsel's pressure that such sentence would be at 50% where and when in reality it was at 85%."

¶ 6 On May 6, 2010, the court acknowledged the withdrawal motion and continued the case.

¶ 7 In June 2010, defendant moved *pro se* to amend his motion to withdraw his plea, adding claims that his plea was not intelligently made due to his mental illness and that counsel was ineffective for not seeking a fitness hearing before his plea.

¶ 8 In July 2010, the court acknowledged the amended motion and ordered its Forensic Clinical Services (FCS) to conduct a behavioral clinical examination (BCX) to evaluate defendant's fitness for sentencing with and without medication. In August 2010, FCS psychiatrist Dr. Jonathan Kelly made his BCX report to the court finding defendant fit for sentencing after reviewing his records and examining him. Dr. Kelly noted that "defendant is not on psychotropic medication."

¶ 9 On August 20, the court acknowledged the BCX report and asked defendant if he was ready to proceed on his withdrawal motion. Defendant requested to proceed *pro se*, and counsel told the court that he had not reviewed in detail the motion as amended. The court continued the case to September 22, 2010. On that day, defendant withdrew his request to act *pro se* and two

recesses were held for counsel to consult with defendant. After the second, the State noted that defendant's BCX showed him fit for sentencing and asserted that the plea transcript showed that "he was fully admonished to everything, including the 85 percent." The court denied the motion to withdraw the plea, expressly finding that defendant was properly admonished. The court then sentenced defendant to 21 years' imprisonment and stated that "it's an 85 percent sentence." The court admonished defendant of his appeal rights and the State expressly nol prossed the other charges. Defendant's timely notice of appeal, prepared *pro se*, described his sentence as "21 years at 85%."

¶ 10 On appeal, we remanded due to the absence of a Supreme Court Rule 604(d) (eff. Feb. 6, 2013) certification by counsel. Because defendant would have the opportunity to file a new withdrawal motion, we expressly declined to consider the issues in his prior motion. *People v. Johnson*, No. 1-10-2887 (2012)(unpublished order under Supreme Court Rule 23).

¶ 11 In May 2012, defendant filed a *pro se* motion to withdraw his plea, claiming that he had been misled into pleading guilty because, in relevant part, he was admonished that he would serve 80% of his prison sentence when, by law, he must serve at least 85%. He attached a copy of the relevant pages of the plea transcript showing the 80% reference. He also claimed that he was unfit to plead and that plea counsel was ineffective for not investigating his mental history.

¶ 12 Post-plea counsel was appointed, and in July 2012 filed a Rule 604(d) certificate averring that the *pro se* petition adequately presents defendant's claims and no amendment is necessary.

¶ 13 At the hearing on the withdrawal motion on July 13, 2012, post-plea counsel stated that "there is or at least appears to be a discrepancy in the transcripts. The dailies have 85 percent. However, the defendant has a copy of the record on appeal which states 80 percent instead of the 85." The court stated that its notes showed 85% for the plea hearing, not just the sentencing hearing. Also noting that defendant had been found fit for sentencing in the BCX, the court denied the motion to withdraw the plea. This appeal timely followed.

¶ 14 On appeal, defendant contends that he must be allowed to withdraw his plea or have his sentence reduced when he was promised that he would serve 80% of his prison sentence while the law requires that he serve at least 85%.

¶ 15 A defendant has no absolute right to withdraw his guilty plea, but must instead show a manifest injustice under the facts involved. *People v. Hughes*, 2012 IL 112817, ¶ 32. Withdrawal is appropriate where the plea was entered through a misapprehension of the facts or law, or where there is doubt as to the defendant's guilt so that justice would be better served by a trial. *Id.* The decision to grant or deny a motion to withdraw a guilty plea rests in the sound discretion of the circuit court and is thus reviewed for abuse of discretion. *Id.*

¶ 16 Here, while the transcript of the plea hearing in the record on appeal shows the court mentioning 80%, it was acknowledged by post-plea counsel that other copies of the record showed 85%. Notably, the court concurred that its notes of the plea hearing showed 85%, and the State had asserted that its copy of the transcript showed 85%. With the court and both parties

concurring, it was reasonable to conclude that the court did not admonish defendant that he would serve 80% of his prison term as the transcript in the record shows.

¶ 17 Moreover, defendant made clear in his initial *pro se* motion to withdraw and *pro se* notice of appeal from its denial that he was aware that 85% and not 80% applied to his sentence. This both corroborates that the court did not say 80% and shows that defendant was not suffering at the key time (when he pled and was sentenced) from the later-claimed 80% misapprehension. On appeal, defendant raises the specter that his "mental health difficulties account for his failure to make specific mention of the court's incorrect 80% admonishment in his original motion." However, he did not merely fail to mention 80% but twice expressly mentioned 85%. The absurdity of this theory -- that the court recited the wrong number but defendant's mental illness caused him to, within that same month, recall or recite what happens to be the legally-correct number -- is palpable. Moreover, defendant was found fit for sentencing in the 2010 BCX.

¶ 18 Under such circumstances, it was reasonable for the court to discount both the single reference to 80% and defendant's averment that he was misled thereby. Stated another way, it was reasonable to conclude that defendant did not actually believe when he pled and was sentenced that the alleged 80% promise was made. In the absence of actual misapprehension of the facts or law by defendant, the court did not err in denying his motion to withdraw his plea.

¶ 19 Accordingly, the judgment of the circuit court is affirmed.

¶ 20 Affirmed.