

No. 1-13-3158

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).

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. 12 C5 50220
)	
DEIVIDAS VIZGAITIS,)	Honorable
)	John Joseph Hynes,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Howse and Taylor concurred in the judgment.

O R D E R

¶ 1 *Held:* Trial court's orders denying defendant's motion to withdraw guilty plea and motion to reconsider that denial affirmed over defendant's contentions that the trial court's admonishments about potential deportation consequences were deficient and that his plea was not voluntary because it was based on a misapprehension of law and/or fact.

¶ 2 Defendant Deividas Vizgaitis entered a negotiated guilty plea on one count of theft and one count of possession of a controlled substance and was sentenced to concurrent terms of 24

months' probation.¹ The trial court denied his subsequent motion to withdraw and vacate his guilty pleas, as well as his motion to reconsider that denial, and defendant challenges those rulings on appeal. He contends that the trial court's admonishments regarding potential deportation consequences were deficient, and that his plea was involuntary because it was based on his misunderstanding of law and/or fact in that he did not know he was not a United States citizen at the time he entered his guilty plea. We affirm.

¶ 3 In April 2012, defendant was charged by information with two counts of theft. Following a Supreme Court Rule 402 conference, defendant and the State reached a plea agreement under which defendant pled guilty to one count of theft in this case and to one count of unlawful possession of a controlled substance in a separate case in exchange for the State's recommendation that he receive concurrent sentences of 24 months' probation.

¶ 4 At the guilty plea hearing, held on May 6, 2013, the trial court admonished defendant, in pertinent part:

"Do you also understand that if you are not a United States Citizen, that a conviction on these matters may have certain consequences with regards to deportation, exclusion from admittance into the United States, and denial of naturalization under the laws of the United States. Do you understand that, sir?"

In response, defendant stated, "yes." He also stated that he understood the nature of the charges against him, the minimum and maximum sentences, and the rights he would be waiving in

¹ Defendant has filed a separate appeal in relation to his guilty plea to possession of a controlled substance in which he raises the same legal arguments as in the case at bar. This appeal deals solely with his guilty plea in relation to his conviction for theft.

entering a guilty plea, and indicated that he was pleading guilty voluntarily and of his own free will. The court sentenced defendant to concurrent terms of 24 months' probation.

¶ 5 On June 5, 2013, defendant's counsel filed a motion to withdraw plea of guilty and vacate judgment, alleging that at the time defendant entered his guilty plea, he was not a United States citizen, and he did not understand the admonishments he was given regarding the consequences of his plea as it pertained to immigration issues and possible deportation. Counsel also contended that he had no knowledge that defendant was not a citizen at the time of the plea hearing, and that after consulting with immigration counsel, he had determined that defendant's convictions would most likely result in his deportation.

¶ 6 At the hearing on defendant's motion to withdraw guilty plea, Cook County probation officer Babette Ensing testified that she interviewed defendant after he pled guilty in this case. At that time, she asked him a series of questions, including his place of birth and whether he was a United States citizen. Defendant stated that he was born in Lithuania and that he was a United States citizen.

¶ 7 Defendant testified that he recalled that at the time he entered his guilty plea in this case, the judge told him about potential consequences of his plea if he was not a United States citizen. When asked what he thought the judge meant by that admonishment, defendant responded "he told me that it means if I am not a citizen I will either go to further charges, he will put me in different situations. My recall, I didn't realize that I wasn't a legal citizen, and I just agreed with everything the judge said. I wasn't really worried. I thought it was fine." Defendant testified that he thought he was a citizen because "[he] never used to get in trouble" and because he was in this country legally, given that he had a permanent resident card, a social security number, and a

valid Illinois driver's license. Defendant testified that he never told his counsel that he was not a United States citizen.

¶ 8 On cross-examination, defendant testified that he received a permanent resident card in 2002, when he was 10 years old. Since that time, he graduated from grade school and attended, but did not graduate from, high school. All of that schooling was conducted in English, which he speaks and understands. Defendant testified that he is aware that he was born outside of the United States, and understands the distinction between being a citizen of the United States by birth, and being legally within the United States. Defendant acknowledged that he told police officers at the time of various arrests that he was born in Illinois, which was false information. When asked if he understood that his permanent resident card stated that he was a permanent resident in the United States, and not a citizen, defendant stated that "didn't really understand" that because he never looked at that card. Defendant further testified that no one forced him to enter his guilty plea in this case and that he never had any problem understanding any of the court proceedings.

¶ 9 On redirect examination, defendant testified that he did not remember telling officers that he was born in Illinois. He stated that he did not think he would have said that, and thought that what he said was that he was a legal citizen and that he lived in Illinois.

¶ 10 Following the testimony, defense counsel argued, *inter alia*, that the trial court's admonishments regarding immigration consequences were deficient because the court did not state the statutory language verbatim, but rather, included the word "certain" and the phrase "with regards to" in addition to that language.

¶ 11 The court denied defendant's motion to withdraw his guilty plea. In doing so, the court stated that defendant's testimony was not credible and that it did not believe that defendant was a confused young man, but rather, that defendant used different places of birth to his own benefit. The court noted that on cross-examination, defendant clearly stated that he had previously told officers that he was born in Illinois and had given them false information, but then on cross-examination stated that he did not recall doing so. The court further found that given his testimony on cross-examination, it was clear that defendant understood the difference between a legal resident and a naturalized citizen. The court noted that at the plea hearing, defendant indicated that he understood the trial court's admonishments regarding immigration consequences, as well as all other admonishments.

¶ 12 Defendant subsequently filed a motion to reconsider the court's denial of his motion to withdraw guilty plea, and attached thereto a deportation order entered on September 19, 2013, reflecting that defendant would be deported to Lithuania. In his motion, defendant argued that the trial court's admonishments pertaining to deportation issues were deficient and that he did not understand the consequences of his plea in relation to deportation. He further argued that he was prejudiced as a result of his guilty plea due to his impending deportation to Lithuania, where he would have no means to support himself.

¶ 13 After a hearing held thereon, the trial court denied defendant's motion to reconsider. In doing so, the court stated that its admonishments to defendant regarding deportation consequences were clear, and that defendant chose to plead guilty in spite of those admonishments, as well as chose to misrepresent his immigration status to others. Defendant

now appeals the trial court's denial of his motion to withdraw guilty plea, as well as its denial his motion or reconsider.

¶ 14 The decision to grant or deny a motion to withdraw a guilty plea is within the sound discretion of the trial court and is reviewed for abuse of discretion. *People v. Delvillar*, 235 Ill. 2d 507, 519 (2009). 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. *Id.* For the reasons that follow, we do not find this to be such a case.

¶ 15 Defendant first argues that the trial court improperly admonished him pursuant to section 113-8 of the Code of Criminal Procedure (Code) (725 ILCS 5/113-8 (West 2012)), and thus abused its discretion in denying his motions. Pursuant to section 113-8 of the Code, prior to accepting a guilty plea, the trial court shall give the following advisement to defendant:

"If you are not a citizen of the United States, you are hereby advised that conviction of the offense for which you have been charged may have the consequence of deportation, exclusion from admission to the United States, or denial of naturalization under the laws of the United States." 725 ILCS 5/113-8 (West 2012).

Here, the trial court stated as follows:

"Do you also understand that if you are not a United States citizen, that a conviction on these matters may have *certain consequences with regards to* deportation, exclusion from admittance into the United States, and denial of naturalization under the laws of the United States. Do you understand that, sir?" (Emphasis added.)

¶ 16 Defendant maintains that by adding the word "certain" and the phrase "with regards to" to its admonishment, the trial court failed to comply with the requirements of section 113-8 of the Code. Defendant contends that the addition of that extra language could have led him to believe that there could be consequences related to deportation, but not deportation itself, and thus the trial court failed to properly warn him of the possible consequences of his guilty plea if he was not a United States citizen.

¶ 17 The State responds that defendant's argument is hyper technical and unpersuasive. We agree. As reflected by the statutory language as compared to the language the trial court used in its admonishment to defendant, it is clear that the trial court conveyed the substance of section 113-8 of the Code to defendant in that it informed him that if he was not a United States citizen, his conviction for the charge in this case may lead to deportation or the other two specified immigration consequences. Defendant, however, argues that use of the word "shall" in the phrase "shall give the following advisement" in section 113-8 means that the trial court must use the "exact words" reflected in the statute. However, defendant has not cited, nor are we aware of, any authority stating that a trial court must quote verbatim the statutory language of section 113-8 of the Code in order for the admonishment to be proper, and thus defendant's argument fails.

¶ 18 Here, we find that the addition of the word "certain" and the phrase "with regards to" did not detract in any way from the trial court's admonishment or engender any confusion into its meaning, particularly where defendant indicated at the plea hearing that he understood each and every admonishment given to him by the trial court, including the one regarding deportation consequences. Accordingly, we find that the trial court properly admonished defendant pursuant to section 113-8 of the Code, and that the trial court did not abuse its discretion in denying

defendant's motion to withdraw guilty plea, or his motion to reconsider that denial, on the basis of that admonishment. *Delvillar*, 235 Ill. 2d at 519-20.

¶ 19 In reaching this conclusion, we have considered defendant's argument that his testimony at the hearing on his motion to withdraw guilty plea indicates that he was in fact confused by the trial court's admonishments regarding potential deportation consequences. Defendant points to his testimony that "[the judge] told me that it means that if I am not a citizen I will either go to further charges, he will put me in different situations." However, we note that immediately thereafter, defendant testified that because he did not realize that he was not a legal citizen, he "just agreed with everything the judge said. I wasn't really worried. I thought it was fine." This testimony reflects that defendant understood the substance of the trial court's admonishment, but believed that it did not apply to him because it was his belief that he was a United States citizen. That is an entirely different matter, which leads us to his next contention on appeal.

¶ 20 Defendant next contends that his guilty plea was not voluntary because it was based upon a misunderstanding of law and/or fact in that at the time he entered his plea, he did not know that he was not a United States citizen and did not understand what it meant to be a United States citizen.

¶ 21 A defendant does not have an automatic right to withdraw a plea of guilty, but must show a manifest injustice under the facts involved. *People v. Jamison*, 197 Ill. 2d 135, 163 (2001). To vacate a guilty plea due to a misapprehension of law or fact, defendant must establish that his mistaken beliefs or impressions were reasonably justified under all the circumstances when those circumstances are judged by an objective standard rather than by defendant's own subjective impression. *People v. Christensen*, 197 Ill. App. 3d 807, 812 (1990).

¶ 22 Here, at the hearing on his motion to withdraw guilty plea, defendant testified that he believed he was a United States citizen because: (1) he has had a permanent resident card since 2002, (2) he has a social security number, (3) he has an Illinois driver's license, and (4) he has never gotten into trouble. At that same hearing, defendant acknowledged that he was born in Lithuania, that he had previously given false information to officers by stating that he was born in Illinois, and testified that he understood the difference between being a citizen of the United States by birth and being legally within the country. Based on this evidence, the trial court specifically found that defendant's testimony that he subjectively did not know that he was not a United States citizen was not credible and that defendant intentionally listed different places of birth at different times to suit his needs. It was for the trial court to make these credibility determinations (*People v. Murphy*, 248 Ill. App. 3d 42, 50 (1993)), and we cannot say that its credibility determinations were against the manifest weight of the evidence.

¶ 23 Even if we were to assume that defendant genuinely subjectively believed that he was a United States citizen, we find that such belief was not reasonably justified. Subjective impressions alone are insufficient grounds for vacating a guilty plea where there is no objective proof that the subjective beliefs were justified. *People v. Canterbury*, 313 Ill. App. 3d 914, 918 (2000). The record shows that defendant's permanent resident card stated that defendant was a permanent resident, and did not state that it conferred citizenship. We find that in light of the contents of this card, it would be objectively unreasonable for a person to believe that the person to whom that card was issued was a United States citizen. Although defendant testified that he never looked at his permanent resident card, the fact remains that the card expressly stated that it merely conferred permanent residence in this country. Moreover, any misapprehension that may

1-13-3158

have existed was not induced by the State, counsel or the court. *People v. Gasper*, 167 Ill. App. 3d 218, 221 (1988). Because we find that there is no objective basis to support defendant's subjective belief that he was a United States citizen, we find that the trial court did not abuse its discretion in denying his motion to withdraw guilty plea or his motion to reconsider that denial on the basis of a misapprehension of law or fact. *Christensen*, 197 Ill. App. 3d at 812-13.

¶ 24 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 25 Affirmed.