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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Winnebago County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 11-CF-1533
)	
JAMES D. TAYLOR,)	Honorable
)	Gary V. Pumilia,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices McLaren and Spence concurred in the judgment.

ORDER

- ¶ 1 *Held:* In light of trial court's admonishments, defendant's guilty plea was voluntary; defendant waived speedy-trial argument; plea had adequate factual basis; and appellate counsel was allowed to withdraw as appeal presented no issue of arguable merit.
- ¶ 2 Defendant, James D. Taylor, entered a negotiated guilty plea to aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(i) (West 2010)) and was sentenced to 180 days in jail and 48 months' probation.
- ¶ 3 The original indictment, filed on July 6, 2011, included four counts. In particular, count I alleged that defendant committed the offense of aggravated criminal sexual abuse in that he was

17 years of age or older and “committed an act of sexual conduct” with A.W. and J.W., who were under 13, in that defendant “intentionally or knowingly masturbated between the children’s feet, for the purpose of sexual arousal or gratification of the defendant (or victim) in violation of 720 ILCS 5/12-16(c)(1)(i).” On February 8, 2012, a superseding indictment was filed. Count I of that indictment alleged that defendant committed the offense of aggravated criminal sexual abuse in that he was 17 years of age or older and “knowingly committed an act of sexual conduct” with A.W., who was under 13, in that defendant “knowingly rubbed his penis on the feet of A.W., for the purpose of sexual gratification or arousal of the victim or the defendant, in violation of 720 ILCS 5/12-16(c)(1)(i).” There was no objection to the superseding indictment.

¶ 4 Defendant remained in custody following his arrest. Before the guilty-plea hearing, defendant was represented by Assistant Public Defender Bradford Morrison. Morrison sought various continuances or did not object to continuances. Defendant also did not object. On one date there was some confusion over a continuance involving a different defendant with the same name and before the same trial judge. However, appellate counsel has supplemented the record to show that Morrison also sought a continuance for defendant and defendant did not object.

¶ 5 At the guilty-plea hearing, defendant was represented by Assistant Public Defender Steven Lee, who was standing in for Morrison. Lee informed the court that defendant agreed to plead guilty to count I in exchange for a sentence of 180 days in jail and 48 months’ probation. Defendant was fully admonished per Illinois Supreme Court Rule 402 (eff. July 1, 1997). Defendant stated that he understood all admonitions. He said that he understood the agreement and had not been promised anything else in exchange for his plea. He confirmed that he had discussed the case thoroughly with Morrison, he was pleading guilty because it was the best

thing to do, he understood everything in connection with the plea, and he had no questions about anything.

¶ 6 A factual basis was given stating that the victim reported to another that a person she believed was named “James William” touched her. When interviewed, she said that defendant put her feet together and rubbed his penis on them. The trial court accepted the plea and then admonished defendant of the necessity to file a motion to withdraw the plea in order to appeal.

¶ 7 Defendant filed a *pro se* motion to withdraw the plea, alleging ineffective assistance of counsel. David Carter was appointed to represent defendant. Carter filed an amended motion alleging that defendant did not fully comprehend the admonitions, that he was innocent, and that Morrison failed to meet with him to discuss the case.

¶ 8 At the hearing on the motion, defendant said that he pleaded guilty because he had been in jail for a year and because he felt that, if he did not plead guilty, he would be stuck there. He also said that he pleaded guilty because he had 30 days after to take back his plea. He said that he was innocent and that Morrison did not meet with him sufficiently to discuss the case. He conceded that he did not state any of those facts at the guilty-plea hearing and that no one forced him to enter the plea. The trial court denied the motion to withdraw, and defendant appealed. The Office of the State Appellate Defender was appointed to represent him.

¶ 9 Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *People v. Jones*, 38 Ill. 2d 384 (1967), the appellate defender moved to withdraw as counsel. In his motion, counsel stated that he read the record and found no issue of arguable merit. Counsel further stated that he advised defendant of his opinion. Counsel supported his motion with a memorandum of law providing a statement of facts and an argument why the appeal presented no issue of arguable merit. Defendant responded and raised additional issues not raised by counsel’s motion. Therefore, we

denied the motion without prejudice and ordered counsel to either file a brief addressing any issue of arguable merit or file a new motion to withdraw. Counsel has filed a new motion to withdraw addressing defendant's arguments.

¶ 10 Counsel initially argued that the trial court did not abuse its discretion in denying defendant's motion to withdraw the plea, because the record shows that the plea was voluntary. We agree.

¶ 11 A defendant does not have an absolute right to withdraw a guilty plea and bears the burden of demonstrating to the trial court the necessity of withdrawing the plea. *People v. Allen*, 323 Ill. App. 3d 312, 315 (2001). Leave to withdraw a guilty plea is granted not as a matter of right, but as required to correct a manifest injustice under the facts involved. *People v. Hillenbrand*, 121 Ill. 2d 537, 545 (1988). Subjective impressions, without substantial objective proof, are not sufficient grounds on which to withdraw a guilty plea. *Id.* The ultimate question is whether the plea was entered knowingly and voluntarily. *People v. Manning*, 371 Ill. App. 3d 457, 459 (2007). "A proper and meticulous admonition of the defendant according to [Illinois Supreme Court Rule 402(a) (eff. July 1, 1997)] cannot simply be ignored." *People v. Spriggle*, 358 Ill. App. 3d 447, 451 (2005). Thus, "[a]n allegation or assertion of innocence without factual substance is insufficient to require allowing the withdrawal of the plea if defendant is adequately informed of the nature of the charges and the consequences of such plea." *People v. Dumas*, 50 Ill. App. 3d 637, 641 (1977).

¶ 12 Here, defendant alleged that his plea was involuntary because he felt that he had no choice and Morrison did not sufficiently meet with him. The record, however, supports the trial court's finding that the plea was voluntary. Defendant was fully and carefully admonished about the plea. He also stated his understanding of the charge and the admonitions and, throughout the

proceedings, he showed an ability to communicate well. See *People v. Robinson*, 157 Ill. App. 3d 622, 629 (1987) (if a plea of guilty is to have any binding effect, the extensive admonitions given by the trial court must be held to overwhelm the defendant's current assertion that he entered his plea involuntarily). Defendant states that he is innocent, but has provided nothing to show that he has a meritorious defense. Thus, the court's denial of the motion to withdraw the plea was not an abuse of discretion.

¶ 13 In his response, defendant argued that his counsel was ineffective for failing to seek a discharge on speedy-trial grounds. Counsel responds that there was no speedy-trial violation.

¶ 14 “[I]t is well settled that a guilty plea waives the right of an accused to have his conviction reversed for want of a speedy trial.” *People v. Bowman*, 96 Ill. App. 3d 136, 140 (1981). When no application for discharge was made prior to a plea of guilty, a defendant cannot avail himself of the speedy-trial statute. *People v. Bivens*, 43 Ill. App. 3d 79, 81 (1976). Further, under Illinois Supreme Court Rule 604(d) (eff. July 1, 2006), any issue not raised by the defendant in the motion to withdraw the plea shall be deemed forfeited.

¶ 15 Here, defendant did not raise his speedy-trial allegations in his motion to withdraw the plea, nor were they presented to the trial court at the hearing on the motion. To the extent defendant suggests that his plea was involuntary because he was not told he could move to discharge based on his speedy-trial right, or that there was plain error, his argument also lacks merit.

¶ 16 Section 103-5(a) of the speedy-trial statute states, “Every person in custody in this State for an alleged offense shall be tried by the court having jurisdiction within 120 days from the date he was taken into custody unless delay is occasioned by the defendant ***.” 725 ILCS

5/103-5(a) (West 2012). Any delay occasioned by the defendant tolls the speedy-trial period until the expiration of the delay, at which point the statute begins to run again. See *People v. Castillo*, 372 Ill. App. 3d 11, 16 (2007). Section 103-5(a) also provides: “Delay shall be considered to be agreed to by the defendant unless he or she objects to the delay by making a written demand for trial or an oral demand for trial on the record.” 725 ILCS 5/103-5(a) (West 2012). The record need not affirmatively show that counsel consulted with and received the advice of the defendant before seeking a continuance, and the defendant is bound by his counsel’s actions. See *People v. Bowman*, 138 Ill. 2d 131, 142-44 (1990).

¶ 17 Here, defendant does not point to any delays that caused the speedy-trial term to run and does not provide any time calculation to show that it had run. The record shows that most of the continuances before the plea were either requested by defendant, agreed to by Morrison, or not objected to. Counsel has also provided a detailed timeline that shows that the speedy-trial term had not expired. Thus, defendant’s speedy-trial argument lacks merit.

¶ 18 Defendant also argues that the superseding indictment brought new charges affecting the speedy-trial calculation and that Morrison was ineffective for failing to object to the filing of the indictment. As with the speedy-trial right, a voluntary guilty plea waives defects in an indictment. *People v. Myrieckes*, 315 Ill. App. 3d 478, 485 (2000). Further, defendant did not raise issues concerning the indictment in his motion to withdraw the plea. However, he contends that we may review the matter for plain error.

¶ 19 Defendant contends that the superseding indictment added new charges, but the differences between count I in the first indictment and count I in the superseding indictment to which defendant pleaded guilty were minimal.

¶ 20 Where new and additional charges arise from the same facts as the original charges and the State had knowledge of these facts at the commencement of the prosecution, the time in which trial must begin on the new and additional charges is subject to the same statutory limitation that is applied to the original charges. *People v. Woodrum*, 223 Ill. 2d 286, 299 (2006). Continuances obtained in connection with the original charges cannot be attributed to the defendant with respect to the new and additional charges, because these new and additional charges were not before the court when those continuances were obtained. *Id.* “[T]his rule applies only when the original and subsequent charges are subject to compulsory joinder.” *Id.*

¶ 21 “When a defendant challenges the sufficiency of an indictment for the first time on appeal, a court of review need only determine whether the indictment apprised the defendant of the precise offense charged with sufficient specificity to prepare his defense.” *Id.* at 297-98. In the speedy-trial context, “the purpose of the rule is to prevent the State from surprising a defendant with new and additional charges, thereby circumventing the defendant’s statutory right to a speedy trial.” *Id.* at 300.

¶ 22 Here, the new indictment charged a violation of the same statute based on the same basic facts. To the extent there were changes, they clarified underlying facts without changing the crime charged. Defendant was sufficiently on notice of the charges and pleaded guilty to a charge that was fully encompassed by the first indictment. Thus, defendant could not have been surprised by the subsequent charge, because it was essentially the same as the original one. See *id.* at 301. Accordingly, defendant’s argument concerning the superseding indictment lacks merit.

¶ 23 Finally, defendant contends that the factual basis for the plea was lacking because it disclosed that a person named James William actually committed the offense. However, the

factual basis included the victim's report that defendant committed the crime. Thus, defendant's argument lacks merit.

¶ 24 After examining the record, the motion to withdraw, and the memorandum of law, we agree with counsel that this appeal presents no issue of arguable merit. Thus, we grant the motion to withdraw, and we affirm the judgment of the circuit court of Winnebago County.

¶ 25 Affirmed.