

NOTICE
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2014 IL App (5th) 120280-U

NO. 5-12-0280

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Madison County.
)	
v.)	No. 08-CF-1967
)	
DIMETRIZ L. SCOTT,)	Honorable
)	James Hackett,
Defendant-Appellant.)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Justices Goldenhersh and Spomer concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in denying the defendant's motion for substitution of judge where the judge did not prejudge the case and where the defendant failed to show that the judge's allegedly prejudicial comments stemmed from an extrajudicial source and resulted in an opinion on the merits on a basis other than what the judge learned from participation in the case. The trial court did not abuse its discretion in denying the defendant's motion to withdraw his guilty plea where the defendant failed to show that his counsel's performance was deficient and resulted in a plea that was not knowingly and voluntarily made.

¶ 2 The defendant, Dimetriz Scott, was charged with aggravated battery with a firearm, two counts of armed violence, and aggravated discharge of a firearm. The defendant entered a guilty plea to count I, aggravated battery with a firearm, in exchange

for a 15-year sentencing cap and the dismissal of the remaining charges. The defendant filed several *pro se* motions to withdraw his guilty plea. The defendant was sentenced to 10 years' imprisonment in the Department of Corrections. The court heard the defendant's motion to withdraw his plea and denied it. The defendant appealed, and this court remanded the matter to the trial court because the defendant's appointed counsel had failed to file a Supreme Court Rule 604(d) certificate and because the defendant had not been given proper appeal admonishments. *People v. Scott*, No. 5-09-0230 (2010) (unpublished order under Supreme Court Rule 23). On remand new counsel was appointed to represent the defendant. The defendant filed a motion to substitute judge. The motion was heard and denied. The defendant filed a motion to withdraw his guilty plea. The trial court denied the motion following a hearing. The defendant filed a timely notice of appeal. We affirm.

¶ 3

BACKGROUND

¶ 4 The defendant was charged with aggravated battery with a firearm, aggravated discharge of a firearm, and two counts of armed violence. On March 4, 2009, the defendant entered a negotiated open plea to aggravated battery with a firearm in violation of section 12-4.2(a)(1) of the Criminal Code of 1961 (720 ILCS 5/12-4.2(a)(1) (West 2008)) with a sentencing cap of 15 years' imprisonment in exchange for the State dismissing the other counts. The following factual summary was presented. The defendant and the victim, Tasha Perryman, were in a dating relationship, she was five months pregnant with his child, and they periodically resided together. On August 26, 2008, the couple had been arguing and at about 2:30 p.m. Tasha left the residence with

her seven-year-old daughter and went to the apartment of her friend, Patricia Rodgers. While she was at Patricia's house, she observed the defendant approach the apartment. He appeared to be upset. Tasha asked Patricia to watch her daughter. She got in her car, at which time the defendant stepped in front of the car, pulled a revolver out of his pocket, and pointed it at her. Tasha told the defendant not to shoot. He discharged the firearm. The bullet went through the windshield and into Tasha's hand which was on the steering wheel. The bullet was recovered from the seat of the car.

¶ 5 At the plea hearing, the defendant stated that he was entering the plea voluntarily, that he was not under the influence of any medications or drugs, that he did not have any mental or physical difficulties in hearing or understanding the proceedings, and that he understood the charges against him. The trial court explained to the defendant that he was being charged with a Class X felony and that he could face fines up to \$200,000, restitution, lab fees, special assessments, and a sentence range between 6 and 30 years with 3 years' mandatory supervised release to be served upon his discharge from prison. The trial court emphasized that the defendant did not have to plead guilty, that it must be the defendant's decision to plead guilty, and that he needed to weigh all the circumstances. It explained that the State had the burden of proving the case and explained what would happen if the defendant chose to go to trial. The trial court informed the defendant that if he pleaded guilty, he would not have a trial and that the case would be resolved based upon his agreement with the State and the plea that he made. The defendant indicated that he understood and that he still wanted to plead guilty. The trial court accepted his guilty plea.

¶ 6 On October 24, 2008, prior to the plea hearing, Tasha completed a statement that she did not think the defendant was trying to hurt her and that she was shot while driving near the defendant. On March 9, March 12, and March 16, 2009, the defendant filed *pro se* motions to withdraw his guilty plea. On March 25, 2009, Tasha filed a statement that because she accidentally almost hit the defendant with her car, he fired a gun at her car and not at her. She claimed that the incident was an accident and that the defendant was a good person. On April 6, 2009, the defendant filed another *pro se* motion to withdraw his guilty plea.

¶ 7 On April 30, 2009, a sentencing hearing took place. The court noted that the defendant had filed a *pro se* motion to withdraw his guilty plea. It indicated that it would "proceed with the sentencing and resolve that issue subsequently."

¶ 8 Kara Dougherty testified on behalf of the State. She testified that she lived in the same apartment complex as Patricia and that she met Tasha through Patricia. On August 26, 2008, Kara heard Tasha talking on the phone just outside her apartment. She stated that Tasha "sounded very frantic" and kept saying: "He said he's going to kill me. He said he's going to kill me today." While inside her apartment she heard a shot ring out and heard Tasha's daughter Keiara screaming. Kara stated she heard Tasha say "you shot me, you shot me," and then drive off. She testified that after the shot was fired she went outside immediately to help Keiara. She stated that she saw the defendant walk away with a gun in his right hand.

¶ 9 Detective Mark Krug testified on behalf of the State. He stated that he interviewed Tasha the day after the shooting. He testified that Tasha told him that on the

day of the shooting, she and the defendant had been involved in a domestic dispute and, as a result of the dispute, the defendant was served with a 10-day eviction notice by the apartment building management. Tasha left the apartment and went to her friend Patricia's apartment in a neighboring apartment complex. About 20 to 30 minutes after arriving at Patricia's apartment, Tasha saw the defendant walking toward her while talking on his cell phone. She stated that he looked angry. She told Patricia to watch Keiara, got in her car, locked the doors, and started the engine to leave. She backed out and was preparing to leave when the defendant stepped in front of the car, pulled a gun out of his pocket, and pointed it at her. Tasha yelled at the defendant not to shoot, but he fired a bullet into the vehicle striking her on her hand that was on the steering wheel. She then put the car in drive and sped off to the ZX Gas Station around the corner. The police were summoned. Detective Krug testified as to the angle of the bullet. Photographs were admitted into evidence. The photographs show the bullet hole in the windshield and a steel rod placed through the hole that depicts the trajectory of the bullet.

¶ 10 The defendant called Tasha to testify on his behalf. She stated that because she was on Vicodin and morphine at the time she spoke to the police, she could not recall what she told them. Tasha testified that she and the defendant had an argument, someone from the apartment complex management called the police, and she was banned from the premises. She then went to Patricia's apartment. She was standing in the parking lot when she saw the defendant approach. She did not want any further conflict so she jumped in her car to drive away. She stated that there was only one way in and out of the parking lot so she drove in the direction of the defendant. She stated that the gun went

off and she yelled "I've been shot" and drove to the gas station. The police and paramedics were called. She testified that she was immediately put on morphine in the ambulance and from that point on she did not remember anything else. She testified that the bullet entered her pinky finger and came out at the top of her hand. Her hand was bandaged at the hospital and remained bandaged for three to four weeks. She stated that she has no long-term damage from the gunshot wound.

¶ 11 Tasha testified that she did not believe that the defendant was trying to hurt her. She stated that she is not afraid of the defendant and was not afraid of him on the day he shot her. She claimed that the incident was "an accident, a misunderstanding." She stated that since the case was filed she had been contacting the State trying to have the charges against the defendant dismissed.

¶ 12 The defendant made a statement in the case. He stated that he did not intend to hurt Tasha. He testified that it had been difficult for Tasha since he has been in jail. She lost her car and fell behind on her bills. He stated that he entered the plea because he "pretty much tried to take the easiest way out because they made me feel like I wasn't going to win anyway."

¶ 13 The trial court found only one factor in mitigation, that the defendant did not have "a significant history of prior criminal history." The court stated that aggravated battery with a firearm was a Class X felony with a statutory minimum sentence of 6 years and a maximum sentence of 30 years' imprisonment. It explained that, because of the negotiated plea, the defendant faced a maximum possible sentence of 15 years' imprisonment. The trial court stated that in any criminal case, the acts of the defendant

cause a lot of people to suffer including the family of the victim and the family of the defendant. The court explained that whether Tasha forgave the defendant and whether his family loved him were factors it had to consider, but that they were not controlling.

¶ 14 The defendant told the court that he did not mean to hurt Tasha and that he had the gun on him because of a "prior event that took place as far as some other guys getting in some situation that didn't concern them and threats being made on my life." The following colloquy then took place:

THE COURT: Can I laugh now?

THE DEFENDANT: Go right ahead, sir.

THE COURT: Can I laugh and say that you're trying—

THE DEFENDANT: Go right ahead.

THE COURT: —to tell me it's self-defense because the mother of your child is driving a car to try to get away from you and you're going to put a bullet through her chest in self-defense?

THE DEFENDANT: No. I didn't aim—I did not aim at her. I did not aim at her. In the reaction of the car coming toward me, I was scared as well.

THE COURT: Okay. All right. Let me do that, then. I'll accept this theory. You want me to laugh at this one now—

THE DEFENDANT: I don't want you laughing.

THE COURT: —that you're saying, I didn't mean to hit her. I was just going to throw a slug through the windshield because she was driving a car down the street?

THE DEFENDANT: If you, your Honor, is actually, you know, looking at the report and everything, as far as the way the bullet entered, I did not even aim at the windshield. I did not even aim at the windshield.

THE COURT: All right. So when a car's coming down the street at you and you're standing in the roadway, your first reaction is to pull out a pistol and throw a slug through the windshield.

THE DEFENDANT: In my reaction of fear, it was, your Honor.

THE COURT: Did you know who was in the car?

THE DEFENDANT: Yes, I knew who was in the car. I saw her when she got in the car. My thought was that she was trying to run me over.

THE COURT: All right. Well, here's what my next question would be: What kind of world do you think we have here?

This is why there's laws that say you can't carry a gun and fire it through the middle of a windshield at someone driving down the street.

What kind of a—what kind of a theory do you have about civilization that says that's appropriate conduct?"

¶ 15 The trial court sentenced the defendant to 10 years' imprisonment in the Department of Corrections with credit for 248 days served. The trial court then addressed the defendant's motion to withdraw his guilty plea and rescheduled a hearing on the motion.

¶ 16 On May 5, 2009, the court heard the defendant's motion to withdraw his guilty plea filed March 9, 2009. The court noted that during the plea hearing the defendant

asked several questions, responded appropriately when spoken to, indicated that he understood everything, and did not have any mental or physical difficulties. The trial court denied the motion to withdraw the guilty plea. The defendant appealed alleging that the trial court failed to admonish him pursuant to Supreme Court Rule 605(c) and that his trial counsel failed to comply with Supreme Court Rule 604(d).

¶ 17 On August 30, 2010, this court issued an unpublished order under Supreme Court Rule 23 remanding the case to the circuit court of Madison County. *People v. Scott*, No. 5-09-0230 (2010) (unpublished order under Supreme Court Rule 23). This court found that the trial court failed to strictly comply with the requirements of Supreme Court Rule 605(c) because it failed to advise the defendant that he must file a motion to withdraw his guilty plea before he could appeal his sentence, and that if the motion was granted his guilty plea would be vacated, any charges that had been dismissed would be reinstated, and a trial date would be set on all the charges. This court further found that trial counsel failed to comply with Supreme Court Rule 604(d). The case was remanded for strict compliance with Supreme Court Rules 604(d) and 605(c). On remand, new counsel was appointed to represent the defendant.

¶ 18 On December 8, 2010, the defendant filed a motion to withdraw his guilty plea and vacate sentence. On the same day the defendant's attorney filed a certificate of compliance with Supreme Court Rule 604(d).

¶ 19 On May 20, 2011, the defendant filed a first amended motion to withdraw guilty plea and vacate sentence. On June 17, 2011, he filed a motion for substitution of judge.

¶ 20 On August 24, 2011, Judge Napp heard the defendant's motion for substitution of

judge. The defendant testified that he felt Judge Hackett was prejudiced toward him. He stated that at the sentencing hearing the judge repeatedly interrupted him and spoke over him. He also argued that Judge Hackett gave his opinion that had the bullet entered the car at a slightly different angle, Tasha would be dead.

¶ 21 The State argued that Judge Hackett was the finder of fact and that he stated conclusions that he believed were reasonable inferences from the evidence presented at the sentencing hearing. It stated that the defendant was difficult at the sentencing hearing as far as interrupting and being disrespectful to the court. The State argued that Judge Hackett gave the defendant a full and fair opportunity to say what he wanted to say when it was appropriate for him to do so. It asserted that the sentence did not show prejudice as he was sentenced to 10 years and not the 15 years sought by the State.

¶ 22 After reviewing the motion and transcript from the sentencing hearing and listening to testimony and arguments, the court denied the defendant's motion for substitution of judge. It pointed out that the defendant has the burden of showing that the judge is so prejudiced against the defendant that he cannot receive a fair and impartial hearing by that judge. The defendant must show that the prejudice he alleges results from an outside influence that is affecting and causing prejudice by the judge. The court pointed out that everything that the defendant testified to and alleged in his motion resulted during the sentencing hearing. There was no allegation of outside influence that somehow affected Judge Hackett and caused him to be prejudiced. The court held that there was no prejudice shown by Judge Hackett. The court found that Judge Hackett gave the defendant the opportunity to make a statement after he pronounced the sentence

and that the defendant had interrupted Judge Hackett while he was trying to pronounce the sentence.

¶ 23 The defendant then stated that he kept interrupting because Judge Hackett had made a comment "Can I laugh now, should I laugh, stating that in some way this was amusing to him." The court stated that it reviewed that part of the transcript. The court found:

"In no way when you read this transcript do you take it that Judge Hackett thought it was amusing or that he was actually laughing. It's a coin of phrase. It was that [the defendant's] theory of self-defense was so preposterous that the fact that [the defendant] would make those statements to him regarding how this victim could have been shot through a windshield in the chest, that he found it completely unbelievable. And as opposed to saying can I laugh now, he could have said everything that you're saying is absolutely not believable, as opposed to can I laugh now. But in no way when you read the transcript that [the defendant] submitted, even that small portion, do you get that he thought it was amusing in any way. As a matter of fact, you can tell by reading the transcript that Judge Hackett took this all very seriously. That he was discussing both the suffering that the defendant and the defendant's family go through when something like this occurs, as well as the victim and the victim's family."

¶ 24 On June 15, 2012, the court heard the defendant's amended motion to withdraw his guilty plea. The defendant testified that Tasha made a victim's statement on October 24, 2008, and that he never saw the statement before his plea hearing on March 4, 2009. He

stated that he told his attorney Tim Berkley that he wanted to go to trial. He complained that he was told attorney Scott Turner was assisting Mr. Berkley, but that Mr. Turner actually took over the case. The defendant testified that he and Mr. Turner discussed what the trial strategy would be if they proceeded to trial. Mr. Turner told the defendant that he had discussed a plea bargain with the State and that if he accepted it his sentence would be capped at 15 years' imprisonment. The defendant asserted that he told Mr. Turner that he did not want a plea bargain. Mr. Turner told him that if he wanted to go to trial he "would have to have something else more to work with in [his] defense, and [he did not] have that." The defendant stated that he told Mr. Turner he still wanted to go to trial. He stated that Mr. Turner said they would discuss the matter later. Later that day, the defendant was called to the courthouse for the plea hearing.

¶ 25 The defendant testified that he believed that Mr. Turner was put on his case because he refused to plea bargain when he was dealing with Mr. Berkley and the public defender's office "felt if they brought someone over of African descent that may persuade me to take this plea." He testified that he felt pressured to take the plea. He stated that Mr. Berkley told him he would be crazy if he did not take the plea. He stated that he met with Mr. Berkley four times and that he met with Mr. Turner once during the beginning of his case, then not again until the day of the plea hearing. He stated he only spoke with Mr. Turner for 30 minutes to one hour on the day of the plea hearing. He asserted that he did not have enough time to speak to Mr. Turner on the morning of his plea. He stated that everything was going so fast, that he wanted to present self-defense as a defense and during the plea hearing Mr. Turner whispered to him that he "had to take this plea bargain

in order to go on with the proceedings, and that was it."

¶ 26 Mr. Berkley testified for the State. He stated that he met with the defendant several times. Mr. Berkley stated that he spent as much time with the defendant as was needed for the defendant to know the case and understand the evidence against him. Mr. Berkley testified that he reviewed the discovery that was provided by the State with the defendant. Mr. Berkley stated that the State offered to recommend a 10-year sentence if the defendant pleaded guilty to the charge of aggravated battery with a firearm and he had recommended the defendant accept the offer. The defendant did not want to accept the offer and wanted to go to trial. Mr. Berkley stated that he never refused the defendant's request to go to trial and that he did not tell him he had no choice but to plead guilty. He admitted pressuring the defendant to plead guilty by telling him that, based on the evidence, a trial would be a waste of time and that he would get convicted and be subject to a longer sentence.

¶ 27 Mr. Berkley testified that, based on the defendant's wishes, he was preparing for trial. He stated that Mr. Turner wanted to be involved in the case and planned to act as second chair. Mr. Berkley testified that he told the defendant that Mr. Turner would be acting as second chair in his case. While Mr. Berkley was preparing for trial, Mr. Turner worked out a plea agreement with the State for an open plea with a sentencing cap. The defendant accepted it.

¶ 28 Mr. Turner testified on behalf of the State. He stated that in accordance with standard office practice to have two attorneys assigned to trials, he was to act as second chair at the defendant's trial. He stated that, on the day of the plea hearing, he spent

several hours talking to the defendant about the open plea. He told the defendant that since there was no question that the defendant shot the gun at the victim in the car, the only question was why he did it. The defendant's theory was that it was an accident and that it was self-defense. Mr. Turner discussed with the defendant his personal opinion about the evidence and what would happen if the defendant went to trial. They discussed the pros and cons of entering the open plea. At some point the defendant agreed to the plea. Mr. Turner stated that he met again with the defendant when he was brought to the courthouse for the plea hearing. At that time they discussed how the hearing would proceed and he answered all the defendant's questions.

¶ 29 Mr. Turner stated that he would never have forced the defendant to enter a guilty plea. Mr. Turner testified that during their conversations on the day of the plea hearing, the defendant did not appear ill, was not irrational, was not incoherent, responded appropriately to his questions, and discussed his concerns appropriately. He stated that he had no trouble communicating with the defendant and the defendant did not appear to have any trouble communicating with him. Mr. Turner stated that he never told the defendant he would not take his case to trial. He stated that he did not pressure the defendant to take the deal. He testified that the defendant might have felt pressure about the situation because he was facing a very significant prison term if he lost at trial. Mr. Turner admitted that he might have told the defendant that it would be crazy to go to trial. Mr. Turner testified that he continued to discuss the plea with the defendant even though the case was supposed to go to trial because he felt the defendant's defense was not going to be successful and the defendant faced a significant sentence if convicted. He stated

that as an attorney he felt obligated to tell the defendant that the defense he wanted to pursue would not work and that he should explore more viable options.

¶ 30 The trial court found that the defendant was properly admonished at the plea hearing, that the admonishments and advice were in compliance with the supreme court rules and case law, and that he understood the consequence of his plea. The court found that Mr. Berkley and Mr. Turner properly and fully represented the defendant. It found that they did not place undue pressure on the defendant to accept the plea. The court found that the transcript of the plea hearing showed a thoughtful, responsive defendant who knowingly and voluntarily entered the plea. The trial court denied the motion to withdraw the plea.

¶ 31 The defendant filed a timely notice of appeal.

¶ 32 ANALYSIS

¶ 33 The defendant argues that the trial court erred in denying his motion for substitution of judge. A defendant is entitled to a fair and impartial trial. *People v. McDaniels*, 144 Ill. App. 3d 459, 462 (1986). The standards of impartiality apply to both a judge and a jury, and if a defendant is not afforded a fair and impartial trial, he has been denied due process of law. *Id.* A defendant bears the burden of establishing actual prejudice, hostility, ill will, or distrust towards him to prevail on a motion for substitution of judge for cause. *People v. Patterson*, 192 Ill. 2d 93, 131 (2000). A reviewing court will only disturb the trial court's ruling on a motion to substitute judge if it is against the manifest weight of the evidence. *People v. Jones*, 219 Ill. 2d 1, 18 (2006). A finding is

against the manifest weight of the evidence when an opposite conclusion is clearly apparent from the record. *People v. Rozela*, 345 Ill. App. 3d 217, 222 (2003).

¶ 34 The defendant argues that Judge Hackett's comments at the sentencing hearing that his theory of the case was laughable evidence the judge's prejudice against him. The defendant asserts that the judge prejudged the question of whether he had a viable self-defense claim, which was the basis of his motion to withdraw his plea pending before the court at the time of the motion to substitute judge. He argues that whether he had a viable defense was relevant to his claim that trial counsel improperly influenced him to plead guilty such that he should have been permitted to withdraw his plea. The defendant argues that because the trial judge was biased against the validity of his claim, his motion to substitute judge should have been granted.

¶ 35 The defendant argues that his case is similar to *People v. McDaniels*. In *McDaniels* the defendant was charged with aggravated battery. The victim went to the defendant's apartment early one morning despite having been told by the police not to visit her. *McDaniels*, 144 Ill. App. 3d at 460. The victim claimed that he dozed on the defendant's couch and was awakened when she poured hot grease on him. *Id.* The defendant contended that she told the victim he was not supposed to be there, that she asked him to leave repeatedly and he refused, that she had been beaten by the victim in the past, and that she felt that the victim would have beaten her or forced her to submit to anal sex had she not thrown grease on him in an attempt to escape. *Id.* The victim was the State's first witness at a bench trial. When the defense attorney began cross-examining the victim, the State objected to his attempt to elicit information concerning a

prior altercation between the victim and the defendant. *Id.* at 461-62. The trial court remarked that it seemed " 'pretty ridiculous to claim self-defense.' " *Id.* at 462.

¶ 36 At the conclusion of the bench trial, the court convicted the defendant of aggravated battery and sentenced her to a five-year term of imprisonment. *Id.* at 459. The defendant appealed. The appellate court found that the trial judge prejudged the validity of the defendant's defense prior to hearing the totality of the evidence. *Id.* at 462. It further found that the fact that the defendant was subsequently allowed to present her theory of the case did not diminish the magnitude of the error. *Id.* at 462-63. The court found that because the trial judge's remarks came very near the beginning of the trial, at defense counsel's first opportunity to present any evidence of its theory of the case, the trial judge was evaluating the merit of the defense before the defense had been presented and at a time when the only evidence before the court was the direct examination of the alleged victim. *Id.* at 463. The *McDaniels* court held that the trial judge's premature and biased remarks denied the defendant a fair and impartial trial. *Id.* at 462.

¶ 37 This case is distinguishable from *McDaniels*. In *McDaniels* the trial court made comments that made it clear that it had prejudged the validity of the defendant's defense prior to hearing the totality of the evidence. In the instant case, the defendant pled guilty to stepping in front of his girlfriend's car, pointing a gun at her, and shooting at her. At the sentencing hearing, after all the other witnesses finished testifying, the defendant was given the opportunity to make a statement and was told by the court that "if [he had] anything that [he wished] to say about the case, the testimony given, the presentence report, the range of sentences or anything, [he had] a wide-open opportunity." He spoke

uninterrupted about his family and his love for Tasha and his children. He stated that he loved Tasha and did not mean to hurt her. He explained that he thought about the plea agreement and decided to take it because he "tried to take the easiest way out because they made me feel like I wasn't going to win anyway." After the defendant concluded his statement, the State and defense counsel presented closing arguments and the trial court discussed factors in aggravation and mitigation. Only then did the defendant bring up self-defense. This is vastly different from *McDaniels* where the trial court made comments evidencing that it had made up its mind at the start of the trial before the defense had any opportunity to present its theory of the case. In this case, Tasha had already testified that she did not believe the defendant was trying to hurt her and that she had been driving in the direction of the defendant when the gun went off. The defense presented its theory of the case and the court was about to rule with respect to sentencing when the defendant introduced his theory of self-defense. When Judge Hackett made the comment "Can I laugh," he was stating that he found the defendant's theory of self-defense unbelievable. His comments did not amount to evidence establishing a fixed anticipatory judgment.

¶ 38 A defendant has the burden of substantiating bias or prejudice on the part of the judge, and it must be shown to have stemmed from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from participation in the case. *People v. Melka*, 319 Ill. App. 3d 431, 442 (2000). Judge Hackett's comments that he did not believe the defendant's theory of self-defense came from what he learned from participation in the case and not from an extrajudicial source.

It was not against the manifest weight of the evidence for the trial court to find that Judge Hackett's comments about laughing did not show animosity, ill will, hostility, or distrust toward the defendant.

¶ 39 The defendant argues that he should have been permitted to withdraw his guilty plea because it was not entered knowingly and voluntarily. A trial court's decision to deny a motion to withdraw a guilty plea is reviewed for an abuse of discretion. *People v. Pullen*, 192 Ill. 2d 36, 39-40 (2000). A trial court abuses its discretion only when its ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court. *People v. Caffey*, 205 Ill. 2d 52, 89 (2001).

¶ 40 The defendant argues he did not enter his plea voluntarily. He asserts that he wanted a jury trial, but was pressured by his attorneys into pleading guilty. He argues that Mr. Berkley pressured him into pleading guilty by telling him that it would be a waste of time to go to trial because he would be convicted and would be subject to a longer sentence than the negotiated plea. The defendant argues that Mr. Turner pressured him into pleading guilty by telling him he would be crazy not to accept the negotiated plea. The defendant attached an affidavit from his sister Doris Williams to his motion to withdraw his guilty plea. In her affidavit Doris swears that Mr. Berkley told her that the State had offered the defendant 10 years' imprisonment if he pleaded guilty. She stated that Mr. Berkley told her that it was a very good offer and that the defendant "would be stupid not to take it." She stated that Mr. Berkley told her she needed "to talk to my brother and convince him to take the offer, instead of going to trial because the offer would be tak[en] off the table and he could get 20 years at 85%."

¶41 "A defendant has no absolute right to withdraw his guilty plea." *People v. Hughes*, 2012 IL 112817, ¶ 32. "The resolution of the question of whether the defendant's pleas, made in reliance on counsel's advice, were voluntarily, intelligently, and knowingly made depends on whether the defendant had effective assistance of counsel." *People v. Pugh*, 157 Ill. 2d 1, 14 (1993). The two-part test announced in *Strickland v. Washington*, 466 U.S. 668 (1984), applies to the plea process. *Pugh*, 157 Ill. 2d at 14.

¶42 A defendant is deprived of effective assistance of counsel if his attorney's performance was deficient and he suffered prejudice as a result. *Strickland*, 466 U.S. at 687. A defendant must satisfy both prongs of the *Strickland* test, and failure to satisfy either proposition will be fatal to the claim. *People v. Richardson*, 189 Ill. 2d 401, 411 (2000). Defense counsel's performance is deficient if it fell below an objective standard of reasonableness. *Strickland*, 466 U.S. at 688. The standard of reasonableness in guilty plea cases is not whether, in retrospect, counsel's advice was correct or incorrect, but whether the advice was within the range of competence demanded of attorneys in criminal cases. *Pugh*, 157 Ill. 2d at 17. "Mistakes in trial strategy are virtually unchallengeable as ineffective assistance of counsel." *People v. Bien*, 277 Ill. App. 3d 744, 750 (1996).

¶43 In the instant case, the defendant has failed to show that the defense attorneys' advice to plead guilty was outside the competence expected of attorneys in criminal cases. Given the evidence, Mr. Berkley and Mr. Turner owed the defendant a duty to inform him of the possibility and probability of outcomes if he chose to proceed to trial.

Mr. Berkley's statement that it would be a waste of time to go to trial and Mr. Turner's comment that the defendant would be crazy not to accept the State's offer did not amount to ineffective assistance of counsel or coercion. Essentially, the attorneys were telling the defendant that, due to the posture of the case, they did not believe a guilty verdict could be avoided. "A defense attorney's honest assessment of a defendant's case cannot be the basis for holding a defendant's guilty plea was involuntary." *Id.* at 751.

¶ 44 The defendant argues that his attorney did not review Tasha's favorable written statement dated October 24, 2008, with him before he pleaded guilty. Based on this statement, he asserts that he would have pursued the claim of self-defense and proceeded to trial. He argues that defense counsel's failure to inform him of the statement or review it with him, all the while pressuring him to plead guilty, rendered his plea involuntary.

¶ 45 In her October 24, 2008, statement, Tasha wrote that she did not think the defendant was trying to shoot her and that she thought he was just trying to scare her. She wrote that after an argument with the defendant in which the police made her leave the house, she went to a friend's apartment. The defendant then came to that apartment complex and "since [she] didn't want any further conflict [she] started to leave, but [she] had to drive right by him. That's when [she] got shot, but [she didn't] think he was aiming at [her]." She went on to write that the defendant was not a bad person, that he gave her money, and that he gave her and her daughter a place to live. She wrote that she did not think he deserved prison time for the incident.

¶ 46 Mr. Berkley testified that he discussed Tasha's statement with the defendant. Mr. Turner testified that he went over Tasha's statement with the defendant. He further

stated that they discussed what Tasha would say at trial, what she had said previously, and the implications of her statements at trial. The trial court determines witness credibility, decides how much weight to give each witness's testimony, resolves conflicts in the evidence, and draws reasonable inferences from the testimony. *People v. Universal Public Transportation, Inc.*, 2012 IL App (1st) 073303-B, ¶ 33. A trier of fact's findings and credibility determinations will be reversed only if they are against the manifest weight of the evidence. *Id.* In the instant case, there was evidence in the record to support a determination that Mr. Berkley and Mr. Turner's testimony that they discussed Tasha's statement with the defendant was more credible than the defendant's claim that they did not review the statement with him before he pleaded guilty.

¶ 47 The defendant asserted that he did not have enough time to discuss his case with Mr. Turner on the day of the plea hearing. Mr. Turner testified that on the day of the plea hearing he spent several hours talking to the defendant about the open plea. Mr. Turner stated that he knew that the defendant's theory of the case was that the shooting was an accident and was in self-defense. He testified that he discussed his opinion with the defendant about the evidence and what would happen if the defendant proceeded to trial. He stated that they discussed the pros and cons of entering the open plea. Both Mr. Turner and Mr. Berkley stated that they would not have forced the defendant to enter a guilty plea and would have taken the case to trial if that was the defendant's wish. Mr. Turner testified that during their discussions on the day of the plea hearing, the defendant did not appear ill, was not irrational, was not incoherent, responded appropriately to his questions, and discussed his concerns appropriately.

¶ 48 At the plea hearing the trial court asked the defendant if he was entering the plea voluntarily. He responded in the affirmative. It questioned him about whether any promises or threats had been made to entice him to enter the guilty plea. He denied that any promises or threats had been made. The defendant told the court that he was not under the influence of any medications or drugs, and that he did not have any physical or mental difficulties in hearing or understanding what he was doing in entering a plea. The court explained the charge against the defendant and the range of possible sentences. The defendant told the trial court that he understood and that he had no questions about the charge or the possible sentence. The court told the defendant that it wanted the plea "to be [his] decision," and told him to weigh all the circumstances. It explained that he did not have to plead guilty and that he could have a trial. After a factual summary was given the court asked the defendant if he was stipulating to that evidence and he responded in the affirmative. The court asked the defendant again if he wished to plead guilty and he stated that he did. At the sentencing hearing the defendant stated that he decided to plead guilty because he "pretty much tried to take the easiest way out."

¶ 49 The trial court did not abuse its discretion in denying the defendant's motion to withdraw his guilty plea. The defendant asserted that he did not knowingly and voluntarily plead guilty due to the ineffective assistance of his counsel. However, the defendant failed to satisfy the first prong of the *Strickland* test in that he failed to show that his counsels' performance was deficient. The defendant claimed that his attorney did not review Tasha's October 24, 2008, statement with him prior to when he pleaded guilty. Both Mr. Berkley and Mr. Truman testified that they did review her statement with the

defendant. The defendant alleged that he did not have sufficient time to discuss his case with Mr. Turner before he pleaded guilty. Mr. Turner testified that he spent several hours on the day of the plea hearing discussing the open plea with the defendant. He reviewed the evidence with the defendant and the defendant's theory of the case. He gave the defendant his opinion about what would transpire if he proceeded to trial. Mr. Berkley testified that he spent enough time with the defendant for the defendant to know the case and understand the evidence against him. Both Mr. Turner and Mr. Berkley testified that they would have taken the defendant's case to trial if that was his wish. Mr. Berkley and Mr. Turner recommended that the defendant plead guilty based on their analysis of his case. Their honest assessment of his case did not make his plea involuntary. At the plea hearing, the trial court questioned the defendant to ensure that his plea was knowing and voluntary. It specifically told him that the plea should be his decision and that he should weigh all the circumstances. The defendant responded repeatedly that he was pleading guilty voluntarily. At the sentencing hearing, he admitted that he pleaded guilty because it was "the easiest way out." The trial court's decision to deny the defendant's motion to withdraw his plea was not arbitrary, fanciful, or unreasonable.

¶ 50

CONCLUSION

¶ 51 For the reasons stated, we affirm the judgment of the circuit court of Madison County.

¶ 52 Affirmed.