2012 IL App (1st) 100854-U

FOURTH DIVISION
August 9, 2012

No. 1-10-0854

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. 07 CR 8000
	)	
SALVADOR TORRES,	)	Honorable
	)	Thomas J. Hennelly,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE STERBA delivered the judgment of the court.
Presiding Justice Lavin and Justice Fitzgerald Smith concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant entered into plea agreement voluntarily where: (1) the evidence established that he understood his interpreter, the court proceedings and plea ramifications; (2) defendant failed to establish a nexus between alleged instances of abuse in prison and his guilty plea; and (3) his depression did not affect his ability to comprehend the consequences of his decision to plead guilty.

¶ 2 Defendant Salvador Torres entered a negotiated guilty plea on two counts of predatory criminal sexual assault and was sentenced to consecutive 15-year prison terms. The trial court denied his subsequent motion to withdraw and vacate his plea and defendant now challenges that

ruling on appeal. He contends that his plea was involuntary, and requests this court to reverse the trial court's denial of his motion to vacate, and to remand his cause for further proceedings.

¶ 3 In April 2007, defendant was charged by indictment with 37 counts of predatory criminal sexual assault, criminal sexual assault, aggravated criminal sexual abuse, and criminal sexual abuse. The assaults were made over a six-month period on his stepdaughter who was then six and seven years old.

¶ 4 On various court dates, the State advised the trial court that defendant was attempting to contact the victim's mother, who the State planned to call as an outcry witness at trial. The court repeatedly admonished defendant to refrain from further attempts to contact potential witnesses. On August 16, 2007, one of the dates he was so admonished, defendant stated that he wanted to say something. The judge informed him that the court reporter was taking down his statements, which could be used against him. Defendant stated "yeah, I understand your honor," and then stated, "I want to let you know I'm guilty. I want to go with guilty."

¶ 5 In November 2007, defendant was examined by a psychiatrist, who found that defendant: (1) was mentally fit to stand trial; (2) understood the charges against him as well as the nature and purpose of the court proceedings; and (3) was neither taking, nor in need of, any psychotropic medication.

¶ 6 At a status hearing on May 8, 2008, defendant asked if he could speak. The trial court advised him not to speak in open court because the State could use his words against him, but added: "On the other hand, I'm not muzzling you. I can't stop you from saying anything."

¶ 7 In June 2008, the parties participated in a Supreme Court Rule 402 conference with the trial court, which resulted in an offer of two consecutive 15-year prison sentences in exchange for a guilty plea to two counts of predatory criminal sexual assault. Defendant indicated that he wanted time to consider his options.

¶ 8 In October 2008, pursuant to defense counsel's request, defendant was examined by a different psychiatrist and was once again found to be mentally fit to stand trial and to understand the nature and purpose of the legal proceedings. Defendant's case was transferred to another judge on February 3, 2009, and, on the same day, the State advised the trial court that it had formally charged defendant with harassing a witness.

¶ 9 On March 3, 2009, the parties participated in a second Rule 402 conference with the new judge. Prior to conducting the conference, the judge properly admonished defendant about the nature and consequences of a Rule 402 conference and asked defendant if he wished to pursue it. Defendant stated, "yes." The resulting offer differed from the previous one only in that in exchange for a guilty plea, the State would dismiss the new charge of harassing a witness. After the conference, defense counsel informed the trial court that she had relayed the results of the conference to defendant, as well as the implications of pleading guilty, and that defendant decided to enter a guilty plea to Counts 1 and 3, for predatory criminal sexual assault. The trial court asked defendant if he was in agreement with what his attorney had represented to the court, and defendant responded "yes."

¶ 10 The trial court then read aloud the substance of Count 1, which defendant asked the court to repeat. The trial court complied and asked defendant if he understood. Defendant responded that he did, and then pleaded guilty to Count 1. The trial court then read aloud the substance of Count 3, after which defendant stated, "I never did that." The trial court ordered a recess so that defendant could speak with his attorney, stating "given the nature of the charges, I want to be comfortable that he understands exactly what we're doing here." After the recess, the trial court re-read the substance of Count 3 and asked defendant if he understood the charge. Defendant replied "yes," and then when asked of his plea to Count 3 he responded, "guilty."

¶ 11 Following that, the trial court appropriately explained to defendant the applicable sentencing ranges and meticulously informed him of the rights he was waiving by pleading guilty. The trial court asked if defendant had any questions and he responded: "Just one question. Who is filing those charges?" The trial court explained that it was the State. Defendant then repeatedly stated that he understood the trial court's admonishments, including that the plea agreement provided for a total of 30 years in prison. The court also asked defendant if he was pleading guilty of his own free will, to which defendant responded "yes."

¶ 12 Prior to imposing sentence, the trial court asked defendant if there was anything more he wished to say, and defendant stated "no." The trial court then sentenced him to two consecutive 15-year prison terms in accordance with the plea agreement and defendant stated that he understood the sentence. After the trial court advised defendant of his appeal rights, defendant also indicated that he understood them. The trial court then stated for the record that an interpreter had been assisting defendant from the inception of the case, including the recess that had been taken during the plea hearing.

¶ 13 On March 25, 2009, defendant mailed a letter to the court stating: "Dear Judge: My name is Salvador Torres. I pled guilty on March 3, 2009. I wish to appeal my case." On April 14, 2009, he mailed a *pro se* motion to withdraw his guilty plea and vacate his sentence, alleging that his attorney told him that he would receive a life sentence unless he pled guilty and that at the plea hearing, his interpreter did not clearly convey the sentence under the plea agreement.

¶ 14 On April 21, 2009, defendant's attorney filed a motion to withdraw the guilty plea, alleging that defendant did not understand the plea ramifications. Because defendant's *pro se* motion raised allegations against his attorney, the trial court appointed conflict counsel to represent him. On August 17, 2009, defendant's new attorney filed a Rule 604(d) certificate, as well as an amended motion to withdraw the guilty plea, alleging that defendant did not enter into

the plea voluntarily because he was depressed and his attorney was ineffective. The motion specified six bases for ineffectiveness, including that defendant's attorney obtained multiple continuances, leaving him in fear for his safety in jail; and that during the recess at the plea hearing, the interpreter told him that his attorney was not helping him and he may as well plead guilty.

¶ 15 At the evidentiary hearing on the motion to withdraw, defendant testified that when he pled guilty, he was depressed because he was having problems in jail and because his attorney only saw him once during the time she represented him. On the day of the plea hearing, he did not understand Lee Diaz, the interpreter, and on several prior occasions he told his attorney not to use Diaz as his interpreter because he did not understand Diaz. He also told his attorney that he was having problems because "they wanted to kill me" and the police said he was a racist.

¶ 16 Defendant testified that he never asked for a Rule 402 conference, but acknowledged answering the judge in the affirmative when asked if he wanted to pursue one on the date of the plea hearing. Each time he informed jail staff that he was depressed, he saw a psychologist, but was never prescribed any medication. Defendant testified that he was placed in protective custody in July 2007 because he was beaten due to the nature of the charges against him, and remained in protective custody the entire time aside from January 2008 through June 2008. He spent part of those six months in "the hole," and, for unknown reasons, was sent to another facility for several months. When defendant's attorney visited him in jail in June 2008, urine and excrement had been thrown in his face.

¶ 17 Defendant further testified that he tried to tell the trial court about his problems in jail, but she told him that he could not speak in the courtroom. He never had an opportunity to tell the succeeding judge about his problems with the interpreter, his attorney, or in jail. He "didn't dare"

raise his hand because he had been previously instructed to speak through his attorney, but acknowledged asking a question and receiving an answer from the judge during the plea hearing.

¶ 18 Lee Diaz testified that he has worked as an English/Spanish interpreter in the criminal court building in Chicago for 8 years, and, prior to that, for 10 years on a part-time basis. He served as defendant's interpreter several times, including the day of the plea hearing. Defendant never told him that he was having trouble understanding his translations, nor did he ever indicate that he did not want Diaz to serve as his translator. Diaz further testified that he never told defendant that his attorney was not helping him and that he may as well plead guilty.

¶ 19 Assistant public defender Sophia Atcherson testified that she represented defendant between November 2007 and March 3, 2009. She stated that defendant understood a large amount of English, but that she always spoke to him with a Spanish interpreter. Defendant never indicated to her that he was having trouble understanding Diaz or any other interpreter.

¶ 20 Atcherson further testified that she visited defendant in jail at least three times, and met with him prior to each court appearance. During one jail visit, defendant expressed concerns about his mental state and the protective custody unit where he was being housed. She asked one of the sergeants if defendant could be sent for an evaluation to determine if he needed treatment for mental health issues, and was told that defendant had made several similar requests and that they would once again follow up on his request. Defendant never told her that they did not do so, and neither of the psychiatrists' reports indicated any need for defendant to be medicated. She never observed any bruises, cuts, scrapes or other injuries on defendant that would be associated with a beating, and defendant never made any such complaints to her.

¶ 21 Atcherson testified that on the day of the plea hearing, defendant requested another Rule 402 conference to see if the offer would improve with the new judge. After the conference, she advised defendant of the results as well as all of the ramifications of pleading guilty. During the

plea hearing recess, she clarified what she had already relayed to defendant regarding the two counts to which he was pleading guilty. She did not induce him to plead guilty and had no reason to believe that he was pleading guilty involuntarily. She never told defendant that he would serve life in prison if he did not plead guilty.

¶ 22 Prior to announcing its decision, the trial court found that defendant's actions and statements were not those of a person who did not understand, but rather one who was cognizant of what was going on, and fully aware of what he was doing when he entered the plea. The trial court noted that defendant did not hesitate to speak when he did not agree with or understand what was going on in the proceedings, as was the case when he stated "I never did that," after Count 3 was initially read to him. The trial court pointed out that when given an opportunity to make a statement on his behalf, defendant declined to do so, although he could have raised any dissatisfaction with his representation or the interpreter at that time. The trial court also noted that defendant mailed his *pro se* motion within the 30-day period, as admonished, further underscoring that defendant understood the proceedings.

¶ 23 The trial court found that: (1) although defendant was depressed, mere depression is not a basis for withdrawing one's plea; (2) it did not believe any of defendant's claims regarding his interpreter; (3) defendant was not deprived of the effective assistance of counsel; and (4) none of the allegations in his *pro se* or amended motions had any merit. The trial court then denied defendant's motion to withdraw his guilty plea and vacate sentence. Defendant challenges that ruling, claiming that his guilty plea was involuntary.

¶ 24 For a guilty plea to be constitutionally valid, the record must affirmatively show that it was made voluntarily and intelligently. *People v. St. Pierre*, 146 Ill. 2d 494, 506 (1992). This requirement is satisfied through substantial compliance with Supreme Court Rule 402(b) (134 Ill. 2d R. 402(b)). *People v. Wilson*, 295 Ill. App. 3d 228, 235 (1998).

¶ 25 Here, defendant does not challenge the adequacy of the trial court's plea admonishments, nor does he raise any claim of ineffective assistance of counsel. Rather he contends that his guilty plea was involuntary because he: (1) had difficulty understanding the pre-trial proceedings and plea colloquy; (2) suffered abuses in pre-trial custody; and (3) was depressed during pre-trial proceedings. As a result, he claims that the trial court erred in denying his motion to withdraw his guilty plea and vacate sentence.

¶ 26 We initially observe that 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). 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 an 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. *Delvillar*, 235 Ill. 2d at 519-20. For the reasons to follow, we do not find this to be such a case.

¶ 27 Defendant maintains that, due to his difficulty understanding his interpreter, he could not adequately follow the pre-trial proceedings and plea colloquy. However, both Diaz and Atcherson testified that defendant never complained about being unable to understand Diaz, a Spanish/English interpreter with 18 years of experience in a criminal court setting. Defendant raised allegations about his inability to understand Diaz only *after* he pled guilty, which weighs heavily against a claim of inadequate comprehension. *People v. Cruz*, 372 Ill. App. 3d 556, 560-61 (2007).

¶ 28 Defendant's assertions, that he did not previously raise his allegations because he had been instructed by the initial trial judge not to speak during court, are belied by the record. On several occasions, the court advised defendant that the State could use his statements against him,

but added that defendant could speak if he wished, thereby merely cautioning him about the potential negative impact of his statements. Moreover, defendant did not hesitate to speak in front of either judge on other occasions, such as when he told his initial judge, "I want to go with guilty," when he spoke out after Count 3 was read to him during the plea hearing and was given the opportunity to speak with his attorney, and when he asked the trial judge who would be filing the charges against him if the case proceeded to trial. Yet, when given the opportunity to make a statement on his own behalf immediately after he pleaded guilty, a time during which he could have raised any issues concerning Diaz, defendant declined to do so. See *People v. Gorga*, 396 Ill. App. 3d 406, 412 (2009).

¶ 29 The record thus substantiates the trial court's observation that defendant's actions were those of one who was cognizant of what was going on during the proceedings and plea colloquy. This includes the fact that defendant mailed his *pro se* motion to withdraw his guilty plea within 30 days, as admonished, further illustrating his understanding of the proceedings. After the evidentiary hearing, the learned judge below specifically found that it did not believe any of defendant's allegations about Diaz, and we have no basis here to disturb that determination. *People v. Campbell*, 146 Ill. 2d 363, 389 (1992); *Cruz*, 372 Ill. App. 3d at 561. Because the record reflects that defendant understood the court proceedings and plea ramifications, the trial court did not abuse its discretion in rejecting defendant's contrary assertion. *Cruz*, 372 Ill. App. 3d at 561-62.

¶ 30 Defendant also contends that his plea was involuntary because he suffered abuses in pre-trial custody. When a defendant claims he pled guilty because of prison conditions, it does not necessarily follow that his plea was not voluntary. *St. Pierre*, 146 Ill. 2d at 507. Rather, defendant must allege a specific instance of abuse which caused him to plead guilty, as well as sufficiently establish a nexus between the alleged violence and his guilty plea. *St. Pierre*, 146 Ill.

2d at 508. Defendant maintains that the connection here is "complicated" by his depression and difficulties with his interpreter, yet cites no authority allowing for a more attenuated nexus under "complicated" circumstances.

¶ 31 In his amended motion, defendant merely stated that he feared he would be victimized in jail, and at the evidentiary hearing he raised two specific instances of abuse: that he was beaten in July 2007 and that urine and excrement were thrown at him in June 2008. However, he pled guilty in March 2009, which was 20 months and 9 months after the alleged incidents, respectively. An almost identical offer was made to him in June 2008; roughly the same time period as the urine and excrement incident. Although that offer was more proximate in time to the abuse, defendant did not accept it, choosing instead to spend nine more months in the jail in which he later claimed to fear for his safety, but in which, pursuant to his own testimony, he was in protective custody the majority of the time. Atcherson testified that she saw defendant before each court date and visited him in jail at least 3 times, but she never observed injuries on him and he never complained to her of having been beaten.

¶ 32 Moreover, Atcherson testified that defendant requested the second Rule 402 conference to see if he could improve the terms of his plea offer, which indicates that defendant was not motivated by fear when he entered the plea agreement. During the plea hearing, defendant repeatedly affirmed that he was pleading guilty freely and voluntarily and that he understood the terms of the plea offer, his sentence and the plea admonishments. Based on these facts, defendant failed to establish a nexus between the incidents of alleged abuse that he specified and his guilty plea (*St. Pierre*, 146 Ill. 2d at 508), and thus the trial court did not abuse its discretion in finding that his guilty plea was voluntary.

¶ 33 In so concluding, we have considered *People v. Urr*, 321 Ill. App. 3d 544 (2001), upon which defendant relies, and find it factually distinguishable. In *Urr*, the defendant informed the

trial court that he was only pleading guilty because he was physically threatened on a daily basis, had been sexually assaulted in prison, and he did not want to die. 321 Ill. App. 3d at 545-46. On review, this court found that because defendant informed the trial court that those specific acts of violence were the reason he was pleading guilty, he had established the requisite nexus between the alleged violence and his decision to plead guilty. *Urr*, 321 Ill. App. 3d at 548. In contrast, here, defendant did not raise any allegations with the trial court about abuses suffered in prison until after he pled guilty, which weighs against a finding that his plea was involuntary. See *Urr*, 321 Ill. App. 3d at 547-48, discussing *People v. Strickland*, 154 Ill. 2d 489 (1992) and *People v. Stokes*, 21 Ill. App. 3d 754, 757 (1974).

¶ 34 Defendant also contends that his depression rendered his plea involuntary, citing *Jamison*, 197 Ill. 2d at 157-58, in support for the general proposition that depression is a factor to be considered in evaluating whether a plea was voluntary. In *Jamison*, our supreme court found that the defendant, who was depressed and on medication for that depression, was still able to comprehend the consequences of his decision to plead guilty, and thus his plea was voluntarily made. 197 Ill. 2d at 142, 157-58. Similarly, here, in spite of any depression defendant may have suffered, he was nevertheless able to comprehend the proceedings as well as the ramifications of his guilty plea.

¶ 35 Defendant was evaluated as fit to stand trial by two psychiatrists and he testified that he saw another psychiatrist while in jail. Further, Atcherson testified that jail staff had informed her that defendant had previously requested mental health care and that they would once again follow up upon request. Yet, unlike the defendant in *Jamison*, defendant here was never prescribed any medication for depression. Moreover, the trial court considered defendant's depression prior to rendering its decision, aptly noting that although there was no dispute that he was depressed, mere depression was not a legal basis for withdrawing one's plea.

¶ 36 Atcherson testified that she discussed the plea ramifications with defendant, and the record shows that the trial court carefully admonished defendant pursuant to Supreme Court Rule 402 and that he repeatedly indicated that he understood the plea admonishments and ramifications. There was no showing that defendant's depression prevented him from comprehending the consequences of his decision to plead guilty, and his plea was thus voluntarily made. *Jamison*, 197 Ill. 2d at 157-58.

¶ 37 Notwithstanding, defendant argues that we should reach a different result from that in *Jamison* because, unlike the defendant in *Jamison*, he is not merely relying on depression to contest the voluntary nature of his guilty plea. However, we have already rejected defendant's two additional contentions.

¶ 38 For the foregoing reasons, we conclude that the trial court did not abuse its discretion in denying defendant's motion to withdraw his guilty plea and affirm its judgment to that effect.

¶ 39 Affirmed.