SECOND DIVISION
March 12, 2013

No. 1-12-0694

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. 11 CR 13807
	)	
DION YOUNG-BEY,	)	Honorable
	)	Rosemary Grant-Higgins,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE QUINN delivered the judgment of the court.
Presiding Justice Harris and Justice Simon concurred in the judgment.

O R D E R

¶ 1 *Held*: Denial of defendant's motion to withdraw his guilty plea affirmed where his claim of ineffective assistance of plea counsel based on erroneous advice was refuted by the record; defendant forfeited his claim of ineffective assistance based on a plausible defense that he was not guilty; trial court substantially complied with Rule 402 and defendant was not prejudiced thereby.

¶ 2 Defendant Dion Young-Bey, *pro se*, appeals from an order of the circuit court of Cook County denying his motion to withdraw his guilty plea. He contends that his plea counsel was ineffective for advising him to plead guilty to aggravated unlawful use of a weapon (aggravated UUW) (720 ILCS 5/24-1.6(a)(1), (3)(B) (West 2010)) when "[a]t the time the [he] was under the impression he was pleading to a misdemeanor because that's what the lawyer told him," and

because he was not guilty of aggravated UUW "under a Supreme Court Case and other case law." Defendant further contends that the trial court failed to admonish him "of the minimum sentence of probation."

¶ 3 The record shows that on August 14, 2011, the State filed a complaint for preliminary examination, charging defendant with having committed the offense of aggravated UUW, in that he knowingly possessed, in his vehicle, a firearm that was uncased, unloaded, and had ammunition immediately accessible at the time of the offense. Following a preliminary hearing, the court entered a finding of probable cause and defendant was then charged by information with three felony counts of aggravated UUW.

¶ 4 On November 8, 2011, defendant's private counsel requested a plea conference under Supreme Court Rule 402 (eff. July 1, 1997), and the trial court addressed defendant in pertinent part as follows:

> "So your attorney indicates he would like me to participate with the State on a 402 conference on the charge of aggravated unlawful use of weapon. There are one, two, three counts, all class 4 felonies.
>
> Minimum and maximum range of sentencing is one to three years in the Illinois Department of Corrections plus a one year mandatory supervised release, often known as parole, period, [*sic*] to follow that.
>
> ***
>
> At the conclusion of the conference, I'll give your attorney an offer, your attorney will communicate the offer to you. If you wish to accept my offer, I will accept your plea of guilty. If you do not wish to accept my offer, you may not substitute me as a judge because you think I've become prejudiced by this additional information. I would be your judge for trial."

¶ 5 Following the plea conference, the trial court acknowledged defendant's wish to plead guilty to aggravated UUW under count one of the information and to accept the court's offer of 24 months' probation. The trial court advised defendant that count one "is a class 4 felony," for which the sentencing range is "one year minimum, three years maximum, plus a one year

mandatory supervised release often known as parole." The trial court also ascertained defendant's understanding that by pleading guilty, he was giving up his right to a trial, to confront and cross-examine witnesses, and to require the State to prove him guilty beyond a reasonable doubt. After the parties stipulated to the factual basis presented at the plea conference, the trial court accepted defendant's plea of guilty to aggravated UUW, and sentenced him to the agreed-upon sentence of probation.

¶ 6 On November 30, 2011, defendant, represented by new private counsel filed a motion to withdraw his guilty plea. In the motion, defendant alleged that it was his understanding that he was pleading guilty to a misdemeanor, rather than a class 4 felony, and since then he has learned that he is not guilty of aggravated UUW because the firearm he owned was encased and the ammunition was not immediately accessible to him.

¶ 7 On February 21, 2012, a hearing was held on defendant's motion to withdraw his guilty plea. Defendant testified that after the plea conference, his attorney informed him that "the State is willing to offer you one year prison, but they are going to reduce it to probation. And I stated like a misdemeanor; correct. And he said yes." On cross-examination, defendant acknowledged that he was aware that he was charged with a felony offense, that the trial court did not advise him that he was charged with a misdemeanor offense and that he did not ask the trial court to clarify any perceived ambiguity.

¶ 8 The trial court denied the motion, agreeing with the State that the transcript of the plea proceeding showed that defendant was admonished in open court, before and after the plea conference, that all three counts of aggravated UUW, charged by information, were class 4 felonies. With regard to defendant's claim that he is not guilty of aggravated UUW, the trial court observed, "your belief that he may have had a defense that was not prosecuted certainly

might be a basis for an appeal for ineffectiveness of some sort, but it is not a basis to withdraw [your] plea."

¶ 9 In this appeal from that ruling, defendant first contends that he was denied the effective assistance of counsel where he pleaded guilty to aggravated UUW when he had a plausible defense to the charge, and where counsel told him he was pleading guilty to a misdemeanor and not a felony offense. The State responds that defendant has forfeited his claim of ineffective assistance, based on plea counsel's decision not to present a potential defense, because he did not raise it in his motion to withdraw his guilty plea. In his reply brief, defendant maintains that he did raise ineffective assistance of counsel in the motion to withdraw his guilty plea where he said his attorney told him the charge was a misdemeanor.

¶ 10 Supreme Court Rule 604(d) (eff. July 1, 2006) explicitly states that issues not preserved in a motion to withdraw a guilty plea are forfeited. This rule is equally applicable to claims of ineffective assistance in connection with the guilty plea (*People v. Bartik,* 94 Ill. App. 3d 696, 698 (1981)), particularly where, as here, defendant's new counsel could have included that issue in the motion to withdraw the guilty plea (*People v. Ramsey,* 137 Ill. App. 3d 443, 448 (1985)). Since defendant did not include this particular claim of ineffectiveness in the motion to withdraw his guilty plea, we find that it is forfeited for review. Ill. S. Ct. R. 604(d) (eff. July 1, 2006); *People v. Bien,* 277 Ill. App. 3d 744, 751 (1996).

¶ 11 As to defendant's attendant claim of ineffective assistance based on the erroneous advice of plea counsel regarding the degree of the charge, we find that claim refuted by his responses to the trial court's questions at the plea hearing and at the hearing on the motion to withdraw his guilty plea. *People v. Ramirez,* 162 Ill. 2d 235, 240 (1994); *People v. Ross,* 21 Ill. 2d 419, 421 (1961). The record clearly shows that defendant was fully informed and acknowledged that he was pleading guilty to a class 4 felony. Without more than his mere assertion to the contrary,

defendant cannot meet his burden to establish the necessary showing of prejudice under the second prong of the test established in *Strickland v. Washington,* 466 U.S. 668 (1984), to substantiate his ineffectiveness claim or to merit withdrawal of his guilty plea. *People v. Hughes,* 2012 IL 112817, ¶ 66; *People v. Batrez,* 334 Ill. App. 3d 772, 778 (2002).

¶ 12 Defendant further contends that because the trial court failed to admonish him of the minimum sentence of probation his conviction should be reversed. We initially observe that defendant did not include this issue in his motion to withdraw his plea of guilty and has thus forfeited it for review. Ill. S. Ct. R. 604(d) (eff. July 1, 2006). In addition, as with his assertions of ineffective assistance of counsel, the faulty admonitions claim in his brief is devoid of any application of the law to the facts in this case or development of a coherent argument as required by Supreme Court Rule 341(h)(7) (eff. July 1, 2008), which also results in forfeiture (*People v. Fair,* 193 Ill. 2d 256, 269 (2000); *People v. Flynn,* 341 Ill. App. 3d 813, 828 (2003)).

¶ 13 Notwithstanding, we observe that Supreme Court Rule 402 (eff. July 1, 1997) was designed to insure properly entered guilty pleas, and not to provide recital of all the possible sentencing situations that might arise. *People v. Stewart,* 101 Ill. 2d 470, 486 (1984). Understandably, defendant does not claim that he was unaware of the possibility of probation because that was the consideration for his plea of guilty. *Stewart,* 101. 2d at 486. The record shows that during the plea hearing, the trial court informed defendant of the minimum and maximum prison sentences for the class 4 felony, and, after the Rule 402 conference, defendant accepted the trial court's offer of 24 months' probation in exchange for his plea of guilty. On these facts, we find that the trial court substantially complied with Rule 402 (*Stewart,* 101 Ill. 2d at 487), that defendant sustained no resulting prejudice to entitle him to withdraw his guilty plea (*People v. Rhodes,* 289 Ill. App. 3d 292, 298 (1997)).

¶ 14 For the reasons stated, we affirm the order of the circuit court of Cook County denying defendant's motion to withdraw his guilty plea.

¶ 15 Affirmed.