FOURTH DIVISION
June 8, 2017

No. 1-15-1896

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. 10 CR 1836
	)	
JOHN PALLOHUSKY,	)	Honorable
	)	Diane Cannon,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE ELLIS delivered the judgment of the court.
Justices Howse and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Denial of motion to withdraw plea affirmed. Defendant cannot establish ineffective assistance in relation to plea where record showed that defendant was admonished regarding risks of blind plea and necessity of restitution in order to receive sentence of probation. Defendant was not denied fair hearing on motion to withdraw plea by court's harsh comments where there was no evidence that court prejudged motion or curtailed defendant's right to present motion.

¶ 2 Defendant John Pallohusky, a former Chicago police officer, entered a blind plea of guilty to theft of funds belonging to the Chicago Police Sergeants Association (CPSA) while defendant served as treasurer and president of the CPSA. Before entering his plea, the defense and prosecution mentioned that there had been some discussion of the possibility of restitution in exchange for the prosecution's amendment of the theft charge to a probationable offense. The trial court warned defendant that, unless he could fully recompense the CPSA prior to his

sentencing hearing, it would not consider probation as a possible sentence. Defendant pled guilty anyway.

¶ 3 The defense failed to make full restitution prior to the sentencing hearing. At sentencing, the defense presented evidence relating to the efforts to make restitution, but the trial court sentenced defendant to 12 years' incarceration. The trial court later reduced defendant's sentence to eight years' incarceration after he made additional restitution.

¶ 4 Defendant filed a motion to withdraw his plea, alleging that he received ineffective assistance of counsel during the plea proceedings. He claimed that, on the day of the plea hearing, his attorney told him he would receive probation if he turned over four assets to the CPSA. Defendant said he was confused by the plea discussions and would not have pled guilty had he known that he would not receive probation. The trial court denied the motion.

¶ 5 Defendant appeals, alleging that the trial court erred in denying that motion because he received ineffective assistance of counsel and that the trial court displayed bias and animosity that deprived him of a fair hearing on his motion to withdraw his plea.

¶ 6 We reject defendant's claims. Defendant cannot establish that he was prejudiced by his attorney's alleged ineffectiveness, as the record and defendant's testimony showed that he was well aware of the risk that, if he did not succeed in turning over the necessary assets, he would not receive a sentence of probation. Nor can defendant show that he was deprived of a fair hearing on his motion to withdraw when the court's comments—while perhaps not a model of proper decorum—came after defendant had a full opportunity to present and argue the motion. None of the court's comments suggested that it had failed to give consideration to the motion; rather, they appeared to be a reaction to defendant's lack of credibility.

¶ 7 I. BACKGROUND

¶ 8 On January 27, 2010, the State charged defendant with theft and official misconduct, alleging that he had stolen more than $500,000 from the CPSA while serving as its treasurer and president from 2005 through 2009.

¶ 9 The case was set for trial April 17, 2012. On that day, Richard Beuke, one of defendant's attorneys, said that the defense was not ready for trial. He said that he had been "speaking with the prosecutors over the last two days about resolving this case" and that he thought it was "going to happen."

¶ 10 The State acknowledged having plea discussions with Beuke over the preceding two days and outlined the parameters of the deal:

> "We will be amending Count 2 to a Class One probationable count. It will be amended in the exact same way it is now, instead of a value in excess of [$]500,000, it will be in excess of $100,000.
>
> ***
>
> Your Honor, at this point in time, then, after your Honor accepts, if you will, the Defendant's blind plea, he will need a [presentence investigation report] and he will then go to a sentencing hearing ***.
>
> At that time, your Honor, the Defendant has explained to us, via Mr. Beuke, that he may be able to come up with restitution in this matter. If he does, that evidence will be presented to you at the sentencing hearing to take into account."

The State added that it expected to be able to prove that defendant stole about $1.15 million.

¶ 11 The trial court "highly discourage[d]" defendant from taking the plea unless he had $1.15 million to make the victims whole "prior to sentencing" and emphasized the high likelihood of a lengthy prison sentence if defendant could not provide full restitution. The court said that

defendant was "looking at 15 years in the penitentiary, and two years mandatory supervised release" if he pled guilty. If defendant did not plead guilty, the court said, "We're going to trial today, bench or jury."

¶ 12 The court continued, "A blind plea is up to me, and I don't think you want to take a blind plea in front of me unless you have $1.1 million that you're going to bring to the State's Attorney's Office with a certified check by May 7th." The court emphasized that it would not accept "a payment plan," where defendant paid small sums of restitution on a monthly basis. The court added, "This case has been going on for two years, and I find it hard to believe that if there was [*sic*] payments, they wouldn't have been made by now, but that's up to you."

¶ 13 Beuke responded that he had told defendant what he and the assistant State's Attorney (ASA) had "discussed as restitution and what is agreed upon." Beuke said, "[W]e'll get that done."

¶ 14 Defendant told the court he wanted to plead guilty. The court informed defendant that "[t]here [was] no agreement between [him] and the State," to which Beuke responded, "[T]here is an agreement between us and the State." The court ordered a short recess so that the State and Beuke could discuss the plea.

¶ 15 When the case was recalled, the State amended count 2 so that the value of the stolen property listed in the count was $100,000. That made the theft count a Class 1 felony, with the possibility of probation. Beuke acknowledged that the deal was a blind guilty plea to count 2, and defendant said he wanted to plead guilty.

¶ 16 The court told defendant that the maximum penalty for Class 1 theft was 15 years' incarceration and that the minimum penalty was probation. The court told defendant that it was "happy to consider probation, based on [defendant's] criminal and social history." But the court

added, "[T]he maximum penalty of 15 years in [prison] is available to me, should your victims not be made whole by the next court date." Defendant said that he understood the possible penalties and that, despite them, he still wanted to plead guilty. Defendant indicated that no one promised him anything or threatened him in order to secure his guilty plea.

¶ 17 The State laid out the factual basis supporting the guilty plea. According to the State, it had evidence that, while defendant was the president and treasurer of the CPSA, he wrote $660,000 in checks made out to "cash" that he used for personal purposes, used CPSA funds to pay off $306,000 on six personal credit cards, and obtained a business credit card for the CPSA that he used for personal purposes totaling $253,000. The total amount of theft was initially $1,219,039.83, but defendant returned $65,000 to the CPSA, "leading to a total theft amount of $1,154,039.83."

¶ 18 The court accepted defendant's guilty plea and set a date for sentencing.

¶ 19 On June 5, 2012, the court held a sentencing hearing. Before the hearing began, Beuke asked the court if it would hold a guilty plea conference, noting that the defense had "complied with everything *** to make restitution in this case." The court said that it had been "clear" regarding the issue of restitution during the plea hearing and that the defense could present whatever evidence of restitution it wanted during the hearing.

¶ 20 In aggravation, Sergeant Michael Barz of the Chicago police department's internal affairs division testified that, in 2009, he received an inquiry about the CPSA's finances. Barz testified that he executed a search warrant at defendant's home on November 20, 2009, where he found financial documents from the CPSA dating back to 2005.

¶ 21 Barz testified that he had taken over as director of the CPSA after defendant's arrest. He said that the CPSA was "in dire financial conditions," noting that it owed the city of Chicago

$1.1 million but had only $870,000 in assets. On cross-examination, Barz testified that CPSA incurred the debt it owed to the city before defendant had become a CPSA board member.

¶ 22 Detective Cheryl Pontecore, a detective with the Chicago police department's financial crimes unit, testified regarding the six personal credit cards defendant paid off using $306,020.37 in CPSA funds. Pontecore testified that defendant had signed 315 checks made out to cash from 2005 through 2009, totaling $709,600. Pontecore also said that, from 2007 through 2009, the CPSA's business credit card totaled $253,419.46 in charges. She said that the business card had charges for airline tickets, hotels, "high-end steak houses," flowers, and parking. She said that many of the flights paid for by the CPSA were to Las Vegas. Pontecore testified that defendant returned $65,000 to the CPSA in October and November 2009.

¶ 23 In mitigation, George Grzeca, another attorney representing defendant, testified as to defendant's efforts to make restitution. Grzeca said that, after he learned defendant entered a blind guilty plea on April 17, 2012, he spoke with the attorneys representing the CPSA about turning over some of defendant's real estate. Grzeca said that the CPSA "did not want to take the property."

¶ 24 Grzeca also testified that he had conversations with other attorneys regarding the $475,000 seized from defendant in civil asset forfeiture proceedings. Grzeca said that he "just had to do the paperwork" but that he was "not accustomed to filing anything to be released" in forfeiture proceedings. He said that defendant had executed a waiver for those funds to be paid to the CPSA. He said that the funds could be released within the next few days.

¶ 25 Grzeca also said that the defense had tried to release defendant's $152,000 pension to the CPSA, but that the pension board needed to approve the release first. Grzeca testified that defendant also received an annuity due to his wife's death, but that the pension board had to

approve that transfer as well. The annuity would pay the CPSA between $22,000 and $25,000 annually until the date of defendant's death. Grzeca testified that defendant had also applied for a $500,000 life insurance policy that named the CPSA as the beneficiary, in order to avoid the possibility that defendant would die before the annuity could fully reimburse the CPSA.

¶ 26 During his argument, Beuke told the court that, over the last several weeks, he and Grzeca had spent "countless hours" trying to make the CPSA whole. He asked the court for the opportunity to continue working on compensating the CPSA. Beuke said that, if the court gave him "a little more time," he could complete the restitution process.

¶ 27 In allocution, defendant apologized for taking so much of the court's time and said that he never intended to delay the proceedings. He said that he accepted responsibility for the theft, that he wanted to continue to repay the CPSA, and that he wanted to have an opportunity to take care of his elderly mother. He also thanked his deceased wife's family for supporting him and coming to court.

¶ 28 The court said that "[i]t [did] not get much lower than stealing from your fellow officers." The court accused defendant of "talking out of both sides of [his] mouth," noting that he had a college degree, but that, during the 2 ½ years his case was pending, he "didn't know how to pay the money back." The court said that it "pray[ed] to God" that the appellate court did not "try to throw it on [defendant's] attorneys" and that it "pray[ed] that [defendant] did not marry [his] girlfriend of 20 years once she got sick so [he] could cash in on her survivor[ ] benefits." The court sentenced defendant to 12 years' incarceration.

¶ 29 Defendant filed a motion to reconsider sentence that was continued several times. At one date set for a hearing on the motion, Grzeca told the court that the $475,000 from the asset forfeiture case had been turned over to the CPSA and that they were working to get the other

assets released to the CPSA. The court offered to continue the motion to give defendant further opportunity to make restitution. The court said, "Pay the money back and I will give you probation. If not, do your 12 years ***."

¶ 30 On July 24, 2013, the court held a hearing on defendant's motion to reconsider sentence. Grzeca told the court that the asset forfeiture funds had been released to the CPSA. Grzeca also indicated that the CPSA had obtained summary judgment in its civil suit against defendant. Grzeca estimated that defendant still owed the CPSA about $600,000. The court reduced defendant's sentence to eight years' incarceration.

¶ 31 Defendant appealed and filed a motion for summary remand, alleging that the trial court had failed to admonish him that he could move to withdraw his plea and that his attorneys failed to file a certificate pursuant to Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013). This court granted defendant's motion and remanded the case to the trial court. We further directed the trial court to admonish defendant pursuant to Illinois Supreme Court Rule 605(b) (eff. Oct. 1, 2001), to allow defendant's attorneys to file a Rule 604(d) certificate, and to give defendant the opportunity to file either a motion to reconsider sentence or a motion to withdraw his guilty plea.

¶ 32 On remand, defendant moved to withdraw his plea. Defendant alleged that, during the recess just before he entered his plea of guilty, his attorney told him:

> "that the 'deal' was that [defendant] would get probation if he did four things:
>
> 1. Turn over his deceased wife Mary's annuity for 10 years;
>
> 2. Give over the cash value of his pension;
>
> 3. Waive any liens for the approximately $450,000 then subject to the forfeiture lawsuit filed by the State at the Daley Center; [and]

4. Sign over the value of the home in Mary's name at 5123 N. Mobile in Chicago."

Defendant said that, "despite the best efforts of defendant and counsel, the victims were not made whole." He alleged that "he would not have pled blind, under these circumstances, unless he was assured he would receive probation." Defendant argued that his attorney provided ineffective assistance when his attorney presented defendant with the guilty plea, "the terms of which had not been discussed beforehand, [and] after which [defendant] believed he would receive probation."

¶ 33 At the hearing on the motion, defendant testified that, on April 17, 2012, he arrived at the courthouse and met with Beuke in the cafeteria. Grzeca was not present. Defendant said that he did not anticipate going to trial that day because he and Beuke had not prepared for trial and Beuke had told him that "it would probably get a short date." Defendant testified that, before April 17, he had never discussed the possibility of a plea with Beuke.

¶ 34 Defendant and Beuke went to the courtroom, where Beuke spoke with the ASA. Defendant testified that, after Beuke spoke with the ASA, he told defendant that they would likely have to start trial that day because the ASA "was getting pressure to start the trial." Defendant asked Beuke where his other attorneys were, and Beuke said he did not know.

¶ 35 Defendant testified that, when Beuke and the ASA began to discuss the outline of the possible blind plea with the trial court, that was the first time defendant had heard of any plea negotiations. During the recess, defendant and Beuke discussed the plea deal. Defendant testified that Beuke told him that he "was going to have to enter into a plea for four specific categories or things that the prosecution wanted in order to receive probation." Those four things were the four assets listed in defendant's motion.

¶ 36 Defendant testified that he expressed skepticism about his ability to turn over those four assets. He said that he told Beuke that the house on Mobile Street "was in probate court" and that he "did not have control over that." He said that he told Beuke that he "did not know *** the cash value of [his] pension fund" or the other assets. Defendant testified that Beuke responded that "it did not matter" what the value of the items was. Defendant asked, "[W]hat if the value is more or less?" Defendant said that Beuke reiterated that the value did not matter; "[i]t was only the four items that was [*sic*] part of the plea." Defendant added that the State's amendment of the charge led him to believe that he had an agreement with the State where, if he met "those four conditions, *** in turn [he] would get probation."

¶ 37 Defendant testified that he told Beuke that he "wasn't comfortable" and that he still wanted to go to trial. According to defendant, Beuke said that defendant "[had] to take [the deal] in order to stay out of the penitentiary and get probation."

¶ 38 Defendant testified that, when the case was recalled, the State indicated that the total amount of restitution was $1.15 million. Defendant said that he had not discussed that figure with Beuke at any time before that.

¶ 39 Defendant testified that, during the plea hearing, he was "confused" and "not able to process" what was going on. He said that he felt as if he had no choice but to enter the plea. Defendant said, "I felt if I didn't take this, that I was going to end up in the penitentiary."

¶ 40 On cross-examination, defendant estimated that, during his career as a police officer, he had seen around 100 guilty plea hearings. He also testified that he had a bachelor's degree and got straight A's in college. Defendant acknowledged that he had appeared in court many times in the more than two years his case was pending and that, at each court appearance, he spoke with

his attorneys. He also acknowledged that he understood the court's warnings about restitution during the plea hearing and that he never told the court he was confused.

¶ 41 The court denied defendant's motion to withdraw his plea. The court noted that it had never "been more clear about the consequences of a plea" than in this case. The court rejected the notion that defendant did not understand the consequences of his plea, citing his education, his experience as a Chicago police officer, and the complicated nature of his theft. The court found defendant's testimony to be "absurd" and characterized his testimony as an attempt to claim that defendant could not "understand *** English." The court added, "It is so offensive to me that *** if I could vacate this plea, go to trial and give you 15 years I would, but I believe the case law would prevent me from doing that since 12 was the original sentence."

¶ 42 The court noted that it had already reduced defendant's sentence by four years and said, "For that break I get the accusation against me of taking a plea from a stupid man; from a man who is too stupid to know what's going on around him; from a man who talked to his lawyers not once, not twice, but according to him over twenty times." The court said that, according to defendant, he was "too dumb to know what a blind plea is," and that it hoped that this claim "ends now." The court also said that it hoped that the pension board received a transcript of defendant's testimony "so that they know that they are sending a complete idiot pension checks." The court concluded, "[Y]our attitude towards life that everyone owes you and you don't have to do anything in return is pathetic, sir."

¶ 43 Defendant filed this appeal.

¶ 44 II. ANALYSIS

¶ 45 On appeal, defendant raises two issues. First, he claims that the trial court abused its discretion in denying his motion to withdraw his guilty plea because he established that his

attorney was ineffective in handling the plea and that his plea was involuntary. Second, he argues that he should be granted a new hearing on his motion to withdraw his guilty plea because the trial judge was biased against him. We address each argument in turn.

¶ 46 A. Withdrawal of Guilty Plea

¶ 47 Defendant claims that the trial court erred in denying his motion to withdraw his guilty plea for two reasons. First, he claims that he established that his attorney rendered ineffective assistance when he was unprepared for trial and pressured defendant into taking a guilty plea whose terms defendant could not meet. Second, he claims that his plea was involuntary under due process principles by virtue of his attorney's unsound advice.

¶ 48 A trial court has discretion in deciding whether a defendant should be allowed to withdraw his guilty plea, and we review a decision to deny withdrawal for an abuse of discretion. *People v. Jamison*, 197 Ill. 2d 135, 163 (2001). An abuse of discretion occurs in this context when the trial court's ruling is arbitrary, fanciful, or so unreasonable that no rational person would adopt the trial court's position. *People v. Delvillar*, 235 Ill. 2d 507, 519 (2009). A defendant establishes an abuse of discretion when "it appears the guilty plea was entered through a misapprehension of the facts or of the law, or that there is doubt of the guilt of the accused and the ends of justice would better be served by submitting the case to a trial." *Jamison*, 197 Ill. 2d at 163; accord *Delvillar*, 235 Ill. 2d at 520.

¶ 49 As we discussed above, both of defendant's claims regarding his guilty plea center on his counsel's allegedly ineffective assistance. Thus, we first turn to the question of whether his attorney was ineffective.

¶ 50 We review a claim of ineffective assistance under the two-prong standard outlined in *Strickland v. Washington*, 466 U.S. 668 (1984). Under *Strickland*, a defendant must establish (1)

that his attorney's performance fell below an objective standard of reasonableness and (2) that his attorney's deficient performance prejudiced him such that there is a reasonable probability that, absent counsel's errors, the result of the proceeding would have been different. *Id.* at 687-88, 694. In conducting the *Strickland* analysis, a reviewing court need not determine whether counsel's performance was deficient if it is easier to dispose of an ineffectiveness claim because the defendant cannot establish prejudice. *Id.* at 697.

¶ 51 To establish prejudice in the context of guilty plea proceedings, "the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). But a conclusory allegation that a defendant would not have pleaded guilty and would have demanded a trial is insufficient to establish prejudice. *People v. Valdez*, 2016 IL 119860, ¶ 29. Rather, a defendant must show that the decision to reject a plea and go to trial would have been a rational one. *Id.*

¶ 52 And "[i]t is well established that admonishments by the circuit court can cure prejudice to a defendant resulting from counsel's incorrect advice." *Id.* ¶ 31. Thus, when a trial court correctly informs a defendant of the consequences of pleading guilty, and the defendant elects to accept the plea anyway, he cannot establish prejudice under *Strickland*. See, *e.g.*, *id.* ¶ 32 (defendant could not establish prejudice based on counsel's failure to inform him of immigration consequences of guilty plea "when the circuit court conveyed the same information to him and defendant still chose to plead guilty").

¶ 53 In this case, defendant testified that, during the recess in the plea hearing, his attorney told him that, in order to get probation, he would have to turn over four assets. When defendant

told his attorney that he did not know the value of those assets, his attorney responded that the value of the assets did not matter.

¶ 54 But that is not what the trial court told defendant. The trial court repeatedly admonished defendant that, for her to consider probation as a possible sentence, defendant would have to fully reimburse the CPSA for the $1.15 million he admitted to taking. So while defendant's attorney may have misled him about the possibility of probation, the trial court made it abundantly clear—clearer, the trial court stated, than any admonition it had ever given—that probation would not be a possible sentence absent full restitution. The court's admonitions cured any prejudice created by counsel's deficient performance.

¶ 55 Critically, at no point did defendant allege that his attorney assured him that they could obtain those assets between April 17, 2012, and defendant's June 5, 2012 sentencing hearing. In fact, defendant's testimony at the hearing indicated that he was skeptical that those assets could be released, especially since his wife's house was involved in probate proceedings. In other words, even if we accept defendant's claim that his lawyer told him he would only need to turn over those four assets (instead of full restitution) to get probation, he knew he had not done so by that June hearing—and thus he would not have had any expectation of receiving probation even under the lower burden.

¶ 56 Defendant cites *People v. Morreale*, 412 Ill. 528 (1952), in support of his claim of ineffective assistance. In *Morreale*, however, both the prosecutor and defense counsel assured the defendant that, if he pled guilty, he would receive probation. *Id.* at 530. Then, when he pled guilty, he received 5 to 10 years' incarceration. *Id.* at 529.

¶ 57 Here, in contrast, defendant was never guaranteed probation, not even under his own version of what his lawyer told him. Defendant testified that his lawyer promised him probation

if he turned over the four assets, but he had not done so by the June 5 hearing. He did not plead guilty under the impression that probation was a sure thing. And given what the court had made emphatically clear to him, he had to know that he had no hope whatsoever for probation. Either way, full restitution or surrendering only the four assets, defendant had not satisfied the requirement by the time he pleaded guilty and thus did not have the same expectation of the defendant in *Morreale*.

¶ 58 Similarly, defendant cites *People v. Correa*, 108 Ill. 2d 541, 547-48 (1985), but in that case, defense counsel incorrectly told the defendant he would not be deported as a result of his guilty plea and the trial court delivered no admonitions regarding the immigration consequences of the plea. Here, by contrast, the court clearly told defendant that he would be sentenced to a term of imprisonment if he could not produce the full $1.15 million in restitution by the date of his sentencing hearing. And even if we accept defendant's testimony that his lawyer told him he would get probation if he surrendered those four assets (as opposed to full restitution) prior to the hearing, that condition was not satisfied by the sentencing hearing. Thus, defendant knew of the possibility (indeed, the great probability) of imprisonment at the time he entered his guilty plea.

¶ 59 Because defendant was apprised of the terms of his plea, including the risk that he would receive a prison sentence if he could not pay back the CPSA, he cannot show that his attorney's advice regarding the guilty plea prejudiced him. We reject defendant's ineffective-assistance claim.

¶ 60 Because we have rejected defendant's ineffective-assistance claim, we likewise reject his claim that his plea was involuntary under due-process principles. See *Hill*, 474 U.S. at 56 ("Where *** a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice

was within the range of competence demanded of attorneys in criminal cases." (Internal quotation marks omitted.)). Defendant's sole claim on appeal is that his plea was involuntary due to his attorney's deficient advice. But as we have concluded that defendant cannot establish the prejudice prong of an ineffectiveness claim, we likewise conclude that he cannot establish that his plea was involuntary based on counsel's ineffectiveness. See *id.* at 58-59 (defendant must establish both prongs of *Strickland* to prevail in claim that plea was involuntary based on counsel's bad advice).

¶ 61 B. Trial Court Bias

¶ 62 Defendant next takes issue with the trial court's conduct during the hearing on his motion to withdraw his plea. Defendant contends that the trial court "displayed palpable hostility" toward him during the hearing. Specifically, defendant notes that the trial judge characterized his claim as a claim that he was "too dumb to know what a blind plea is" and that he was a "stupid man" and a "buffoon." He also noted that the judge said she hoped that the pension board would receive a copy of the transcript of the hearing so that it knew it was "sending a complete idiot pension checks."

¶ 63 When a judge makes improper comments during a jury trial, the comments themselves may constitute reversible error, since "the trial judge has a duty to refrain from conveying improper impressions to the jury." *People v. Brown*, 172 Ill. 2d 1, 38 (1996). But even in the context of a bench trial, where there is no risk of conveying an improper impression to the jury, we will order a new trial where a trial court's comments show that it denied defendant a fair and impartial trial. *People v. Heiman*, 286 Ill. App. 3d 102, 113 (1996). For example, we have ordered new trials where, during a bench trial, a court makes comments showing that it "evaluat[ed] the merit of the defense *** before that defense had been presented" (*id.*) or

interrupts defense counsel's argument to the extent that it denies defendant his right to make a proper closing argument (*People v. Stevens*, 338 Ill. App. 3d 806, 810 (2003)).

¶ 64 This case arises in the context of a hearing on a motion to withdraw a guilty plea. Because no jury was present for any of the trial judge's remarks, we find it appropriate to apply those standards that we have applied when reviewing a judge's comments during a bench trial. Defendant thus must show that the trial court's improper comments in this case denied him a fair and impartial hearing on his motion to withdraw his guilty plea.

¶ 65 Defendant contends that the trial court's comments show that it "prejudged" his motion and failed to "even consider[ ] the crux of the defense theory." Defendant claims that the trial court improperly focused on his ability to understand the court's admonitions rather than focusing on whether Beuke's advice "was so wrong that the judge's warnings were not curative." According to defendant, the court improperly focused on the admonitions rather than defendant's testimony regarding Beuke's advice.

¶ 66 We disagree. As we noted above, a trial court's admonitions may cure a defense attorney's incorrect advice regarding a guilty plea. *Valdez*, 2016 IL 119860, ¶ 31. And defendant's claim was that he believed he would get probation if he entered the guilty plea that day. It was thus necessary for the trial court to examine its admonitions—including its repeated warnings that defendant would *not* get probation absent full restitution—to evaluate his ineffectiveness claim. The court's findings regarding its admonitions did not show that the trial court misunderstood defendant's claim.

¶ 67 Nor did the trial court's comments during the hearing indicate that it prejudged the motion or abridged defendant's right to present his ineffective-assistance claim. The trial court's comments came during its rulings, after defendant had testified and his attorney had argued.

Moreover, the comments did not indicate that the trial court improperly disregarded or failed to consider any evidence or argument. Rather, they appeared to be remarks—admittedly hyperbolic—about defendant's credibility. Thus, we disagree that the trial court's comments indicated that it deprived him of a fair hearing.

¶ 68 Defendant cites *People v. Phuong*, 287 Ill. App. 3d 988 (1997), but that case is distinguishable. In *Phuong*, the trial court presiding over the defendant's bench trial made several disparaging remarks regarding the defendant's Chinese heritage and inability to speak English. *Id.* at 994. Here, the trial court made no similar comments regarding defendant's ethnicity that indicated some type of bias.

¶ 69 Moreover, in *Phuong*, the trial court made its improper remarks throughout the course of the bench trial (*id.*), suggesting that it had formed a preconceived notion regarding the defendant's guilt. By contrast, in this case, the trial court made its comments in the context of its findings on the motion to withdraw defendant's guilty plea. Thus, the comments do not show that the trial court prejudged the motion to withdraw. Rather, the court reacted to defendant's lack of credibility at the conclusion of the hearing.

¶ 70 Defendant argues that we should consider the court's comments at the hearing in concert with the court's comments at his initial sentencing hearing. The State claims that defendant has forfeited any challenge to the earlier proceedings, because he failed to object to them below.

¶ 71 We find no forfeiture in this context. Defendant is not contesting the fairness of those other proceedings. In the context of this argument, he does not claim that he is entitled to a new sentencing hearing. He simply asks us to view those remarks as additional evidence supporting his overall claim that the trial court had prejudged the motion to withdraw his plea because of some animosity toward him. Because we must view a trial court's allegedly biased comments in

context (*People v. Jackson*, 205 Ill. 2d 247, 277 (2001)), we may consider the court's earlier comments as evidence of its prejudgment during the motion to withdraw the guilty plea.

¶ 72 But we disagree with the merit of defendant's claim. Even though the trial court displayed a lack of patience with defendant—and disgust with defendant's acts—at his sentencing hearing, defendant cannot show that these comments affected the hearing on his motion to withdraw his plea. Whatever the trial court's opinion of defendant, the record does not show that the trial court curtailed his presentation of the motion or prejudged the motion.

¶ 73 Moreover, it is important to note that, despite the trial court's comments about defendant at the initial sentencing hearing, the trial court ultimately reduced defendant's sentence by one third, from 12 years to 8, after he made additional restitution. And before reducing his sentence, the court gave defendant many months to complete restitution and continued to entertain the possibility of reducing defendant's sentence to probation if he completed restitution. Thus, the court's alleged antipathy toward defendant did not prevent it from considering the merits of his motion to reconsider sentence and continually give defendant the chance to satisfy the debt. If anything, the record shows that the trial court was able to set aside any issues it had with defendant at the sentencing hearing in later proceedings.

¶ 74 Defendant notes that the trial court "denied continuances at the expense of [his] defense," but he does not develop this argument. Defendant does not explain how the denial of a continuance affected his defense or discuss any other factors bearing on the propriety of the denial. See *People v. Walker*, 232 Ill. 2d 113, 125-26 (2009) (laying out several factors to consider when reviewing denial of continuance). Because defendant has not developed this argument, he has forfeited any claim that the trial court erred in denying him a continuance. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (party's brief must contain party's contentions and "the

reasons therefor"); *People v. Lacy*, 407 Ill. App. 3d 442, 459 (2011) (defendant forfeited argument on appeal where he did not develop it further "than a one-sentence statement").

¶ 75 We do not mean to wholly excuse the trial court's comments. Some of them crossed the line. Canon 3 of the Code of Judicial Conduct states that "[a] judge should be patient, dignified, and courteous to litigants" (Ill. S. Ct. R. 63(A)(3) (eff. July 1, 2013)) and that all proceedings "should be conducted with fitting dignity, decorum, and without distraction" (Ill. S. Ct. R. 63(A)(8) (eff. July 1, 2013)). Our supreme court has noted that "dignity is necessary for judicial proceedings" and that a trial judge "should exercise restraint over his conduct and utterances, and should control his emotions." *People v. Urdiales*, 225 Ill. 2d 354, 421 (2007).

¶ 76 We fully recognize that the trial court was expressing its frustration with defendant's actions and what it perceived as the disingenuous nature of the position he was taking, and its comments should be considered in that context. The court was not calling defendant a "complete idiot" or "stupid man" or "buffoon"; to the contrary, it was making the point that he was *none* of those things, but to believe defendant's argument, those things would have to be true. Still, the trial court also referred to defendant's attitude as "pathetic" and similarly suggested, without any basis we can find, that defendant married his girlfriend after she became sick so he could collect her survivor's benefits. Whatever the trial court thought of the merit of defendant's motion, those comments stepped over the boundary of appropriate commentary.

¶ 77 With that said, we find no substantive error in the trial court's judgment and affirm it in all respects.

¶ 78 Affirmed.