

2011 IL App (2d) 091350-U
No. 2-09-1350

Order filed November 1, 2011

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 04-CF-1149
)	
HIEU VAN LA,)	Honorable
)	Theodore S. Potkonjak,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Hudson concurred in the judgment.

ORDER

Held: (1) The trial court complied with this court's prior mandate in ruling on the defendant's motion to withdraw his guilty plea; and (2) the trial court did not abuse its discretion in denying the defendant's motion to withdraw his guilty plea.

¶ 1 This is the second time that this case is before this court. On July 2, 2004, the defendant, Hieu Van La, pled guilty to unlawful delivery of a controlled substance (720 ILCS 570/401(a)(7.5)(D)(ii)(West 2002)). He was subsequently sentenced to 25 years' imprisonment. Following the denial of his motion to withdraw his guilty plea, the defendant appealed, arguing that his attorney was ineffective for not seeking a neurological examination of him despite indications

that he may have suffered a brain injury that could have affected his ability to comprehend the plea-related proceedings. On appeal, this court held that defense counsel was ineffective for failing to seek neurological testing. *People v. La*, 2-06-0365 (2008) (unpublished order under Supreme Court Rule 23) (*La I*). We therefore vacated the trial court's decision and remanded so that the defendant could have neurological testing before the trial court ruled on the motion to withdraw the plea. See *id.* at 15. On remand, the trial court again denied the defendant's motion to withdraw his guilty plea. The defendant argues on appeal that (1) the trial court abused its discretion in denying his motion to withdraw his guilty plea and (2) alternatively, the cause should be remanded for a new hearing on his motion to withdraw his guilty plea because the trial court did not comply with this court's mandate in *La I*. We affirm.

¶ 2 On July 2, 2004, the defendant pled guilty to the unlawful delivery of over 1,500 Ecstasy tablets (720 ILCS 570/401(a)(7.5)(D)(ii)(West 2002)). A presentence investigation report (PSI) was filed on July 22, 2004. The PSI indicated that the defendant was using cocaine and Ecstasy during 2004. The PSI also indicated that the defendant had worked at the United Parcel Service (UPS). While working there, the defendant reported that he had a head injury that knocked him unconscious for one or two days. He continued to experience dizziness after the fall. The probation officer who prepared the PSI contacted the defendant's attorney and recommended that the defendant be given a mental health assessment. On July 26, 2004, the trial court granted defense counsel's request for a mental health evaluation.

¶ 3 Dr. Karen Chantry, a clinical psychologist, evaluated the defendant on August 23, 2004. She concluded that the defendant's extensive use of Ecstasy had caused him permanent brain damage. As part of her evaluation, she also questioned the defendant regarding the circumstances of his head injury. He told her that, while working at UPS, one day he had been on a conveyor belt near the

ceiling to release a jam and hit his head on a water pipe. He fell to the floor, passing out. His head bled and he continued to pass in and out of consciousness. He was taken to the hospital, where he remained for several days. He thereafter continued to get headaches and be dizzy. Dr. Chantry recommended that the defendant be “followed up by a neurologist to determine if there are continuing brain deficits due to the traumatic brain injury.” Dr. Chantry also diagnosed the defendant with a severe, recurrent, major depressive disorder.

¶ 4 On September 7, 2004, the trial court conducted an evidentiary hearing. The State presented the testimony of a police officer that the defendant agreed to sell him 5,400 pills of Ecstasy, and that the defendant was not the main supplier. In mitigation, the defense attorney drew the trial court’s attention to the defendant’s diagnosis of major depression and brain damage resulting from his drug use and the injury to his head. The attorney did not raise any insanity or fitness-related arguments. At the close of the hearing, the trial court sentenced the defendant to 25 years’ imprisonment.

¶ 5 On January 6, 2006, the trial court granted the defendant leave to file an amended motion to withdraw his guilty plea. The amended motion alleged that, at the time of the plea, the defendant suffered from “neurological and psychiatric deficiencies” that rendered him incapable of waiving his rights knowingly and voluntarily.

¶ 6 The trial court subsequently held a hearing on the motion to withdraw the plea. The defendant testified that he had come to the United States from Vietnam when he was seven years old, and went to school in the United States until tenth grade. He testified that, around the time that he pled guilty, he was not thinking clearly or understanding what was going on. The defendant testified that when the trial court asked him if he was “mentally and physically well,” his answer of “yes” was not correct because he did not understand the phrase “mentally well” or its meaning and

did not understand what he was being asked. The defendant said that he needed an interpreter to explain it thoroughly to him so that he could understand.

¶ 7 On cross-examination, the defendant admitted that he never told the trial court that he needed an interpreter, but said that he tried to tell his former attorney. He understood most of what the prosecutor had said in court. The defendant acknowledged that he spoke English with the probation officer who interviewed him for the PSI and with the police officer when he committed the offense. The defendant testified that when the trial judge told him about the different trial rights he would give up by pleading guilty, “he just pretty much said yes to most of them which [he] didn’t really understand,” and that he “was a little confused” when the judge explained that he was not bound to any particular sentence regardless of the Rule 402 conference.

¶ 8 The State moved for a directed finding denying the motion to withdraw the plea, and the trial court granted same. The trial court (Judge Booras) found that the defendant did not suffer from any psychological problems that prevented him from understanding the proceedings before the court. The trial court also commented that, based on its own observations of the defendant, he appeared alert and properly answered the questions that were asked of him. The trial court also found that the defendant was “faking” that he had any difficulty understanding English.

¶ 9 On his first appeal, the defendant argued that he received ineffective assistance of counsel because defense counsel failed to request neurological testing to determine whether the defendant suffered from a brain injury that impaired his ability to understand the plea proceedings. We agreed that defense counsel was ineffective because a neurological examination of the defendant would have been an important source of potential evidence for the success of the motion to withdraw. *La I* at 11. We explained that without such an examination, the only support for the motion was the defendant’s own testimony regarding his mental state at the time of his plea—evidence that was

subject to justifiable attack as being self-serving and lacking objective basis. *Id.* We therefore “vacate[d] the judgment of the circuit court of Lake County denying the defendant’s motion to withdraw the plea, and remand[ed] the case to permit the defendant to undergo neurological testing prior to the resolution of that motion.” *Id.* at 15. In so ruling, we explained:

“[T]he defendant here appears, at least on the surface, to have been rational and in full possession of his faculties at the time he entered the plea. On remand, the trial court may ultimately conclude that that impression was correct, despite the findings of the neurological examination. Nevertheless, we find instructive [*People v.*] *Allen’s* [101 Ill. 2d 24 (1984)] focus on ensuring that the defendant was capable of understanding the nature of the proceedings against him at the time he entered his plea of guilty. Finally, in this case, as in *Allen*, a reversal to permit the defendant to undergo neurological examination does not create the risk of a miscarriage of justice: if the results of the testing show no impairment in the defendant’s ability to understand the plea proceedings, the trial court can deny the motion to withdraw the plea and the defendant’s original conviction and sentence will stand.” *Id.* at 14-15.

¶ 10 On remand, the matter was presided over by a different judge than the judge who presided over the case prior to the appeal. The trial court permitted the defense to hire Dr. Robert Heilbronner to conduct neurological testing on the defendant. Dr. Heilbronner subsequently prepared a report, dated September 20, 2008. In his report, Dr. Heilbronner opined that the defendant’s limited understanding of English, a “moderate traumatic head injury,” chronic substance abuse and neurocognitive deficits could have affected the defendant’s capacity to comprehend the 2004 plea proceedings. On April 6, 2009, the trial court conducted a hearing on the defendant’s motion to withdraw his guilty plea. The trial court continued the hearing, however, after it became

apparent that Dr. Heilbronner had not been able to review the medical records regarding the defendant's head injury as well as other records pertaining to the court proceedings.

¶ 11 On October 20, 2009, Dr. Heilbronner submitted a revised opinion letter. In his letter, Dr. Heilbronner concluded that the defendant's head injury was not as serious as he originally believed. Rather, it appeared to have been a mild concussion, which would not have affected his capacity to understand the plea proceedings. Dr. Heilbronner stated that he did not have enough information to opine to a reasonable degree of neuropsychological certainty as whether the defendant's substance abuse had caused brain damage. However, any acute effects of the substance use would have dissipated by the time of the defendant's plea. Thus, the defendant's drug use would not have been a factor affecting his ability to enter a guilty plea. Dr. Heilbronner did not have information about how the plea offer had been presented to the defendant by defense counsel, but the defendant's "average" intellectual abilities would have been at a level sufficient for understanding the necessary components of a plea proceeding. Dr. Heilbronner noted that in light of the defendant's limited knowledge and use of English, it would not be unreasonable to consider that the defendant may have had difficulty understanding various aspects of the plea proceedings for reasons other than brain damage.

¶ 12 The hearing on the defendant's motion to withdraw his plea resumed on December 15, 2009. The parties stipulated that if called to testify, Dr. Heilbronner would testify consistent with his letter dated October 20, 2009. The defendant did not wish to testify. When the trial court asked the defendant if he had enough time to discuss that decision with his attorney, the defendant said he had not had enough time and was "a little lost." The trial court recessed to allow the defendant more time to talk to his attorney. After the recess, the trial court granted defense counsel's motion to allow the defendant time to discuss the decision with his family.

¶ 13 On December 21, 2009, the hearing on the motion resumed. The defendant assured the trial court that he had enough time to discuss the matter with his attorney, and he had decided he did not want to testify. Following the hearing, the trial court denied the defendant's motion to withdraw his guilty plea. The trial court explained that it had read the transcript of the plea, had reviewed this court's order in *La I* and Dr. Heilbronner's reports, and had observed the defendant during the post-appeal appearances. The trial found that Dr. Heilbronner's report demonstrated that he was "extremely knowledgeable in his field." The trial court further noted that it had complied with the appellate court mandate because neurological testing had been done and that testing "basically show[ed] that there was no brain injury or cognitive impairment at the time of the plea." Following the trial court's ruling, the defendant filed a timely notice of appeal.

¶ 14 On appeal, the defendant argues that the trial court erred in not allowing him to withdraw his guilty plea and alternatively that the proceedings should be remanded for a new hearing because the court did not comply with this court's mandate in *La I*. We address the defendant's second contention first.

¶ 15 The defendant argues that our mandate in *La I* required the trial court to consider the evidence from the prior hearing on his motion to withdraw his guilty plea as well as the neurological evaluation before it ruled on the motion. As the defendant insists that the trial court did not consider evidence from the prior hearing, he argues that the cause should be remanded for the trial court to conduct a new hearing on his motion to withdraw his guilty plea. We believe that defendant mischaracterizes our mandate in *La I*.

¶ 16 In *La I*, we vacated the trial court's ruling on the defendant's motion to withdraw his guilty plea so as to permit the defendant to undergo neurological testing prior to the resolution of that motion. We further stated that, "if the results of the testing show no impairment in the defendant's

ability to understand the plea proceedings, the trial court [could] deny the motion to withdraw the plea and the defendant's original conviction and sentence [would] stand.” *La I* at 14-15. Here, the trial court permitted the defendant to undergo neurological testing and considered that neurological testing when it ruled on the defendant’s motion to withdraw his guilty plea. The trial court denied the defendant’s motion after it specifically found that the defendant did not have a brain injury or other cognitive impairment at the time of the plea. Accordingly, we find that the trial court complied with our mandate in *La I*. The defendant’s argument to the contrary is therefore without merit.

¶ 17 We next consider the defendant’s argument that the trial court abused its discretion in denying his motion to withdraw his guilty plea. The premise of the defendant’s argument is that the trial court should have considered additional evidence beyond the neurological testing as well as reconsidered the evidence presented at the original hearing before it ruled on his motion to withdraw his guilty plea. Specifically, the defendant argues that the trial court should have found his guilty plea to be involuntary in light of (1) his testimony at the original hearing that he did not understand the plea admonitions; (2) Dr. Chantry’s report that he had difficulty understanding questions asked of him; and (3) Dr. Heilbronner’s report that he had difficulty understanding various aspects of the plea proceedings. As explained above, our mandate did not require the trial court to consider such evidence. Nonetheless, even taking into account such evidence, we do not believe that the trial court erred in denying the defendant’s motion to withdraw his guilty plea.

¶ 18 Leave to withdraw a plea of guilty is not granted as a matter of right, but as required to correct a manifest injustice under the facts involved. *People v. Pullen*, 192 Ill. 2d 36, 39 (2000). A defendant has no absolute right to withdraw a guilty plea and bears the burden of showing the necessity for withdrawal. *People v. Artale*, 244 Ill. App. 3d 469, 475 (1993). A court should allow a defendant to withdraw his plea where the plea was entered based on a misapprehension of the facts

or the law or because of misrepresentations by counsel, where there is doubt of the defendant's guilt, where he has a defense worthy of consideration, or where the ends of justice will be better served by submitting the case to a jury. *People v. Stevens*, 324 Ill. App. 3d 1084, 1090 (2001). Subjective impressions alone are not sufficient grounds to vacate a guilty plea absent some objective proof that the subjective impressions were justified. *Id.* It is within the sound discretion of the trial court to determine whether a guilty plea may be withdrawn, and, on appeal, this decision will not be disturbed unless the decision is an abuse of that discretion. *People v. Davis*, 145 Ill. 2d 240, 244 (1991).

¶ 19 At the original hearing on his motion to withdraw his guilty plea, the defendant insisted that his lack of understanding of English prevented him from understanding the plea admonitions. The trial court rejected the defendant's testimony, explaining that it believed the defendant was "faking" a lacking of understanding of English. Such a finding undermined the credibility of all of the defendant's testimony. As the defendant's testimony was not credible, this also undermined Dr. Chantry's findings, which were based on her interviews with the defendant.

¶ 20 Further, although the defendant points to certain parts of Dr. Heilbronner's original report that suggest that the defendant had neurological deficiencies which prevented him from understanding the plea proceedings, we believe that Dr. Heilbronner's revised report supported a conclusion that the defendant understood the plea proceedings. Dr. Heilbronner found that (1) the defendant did not suffer a significant head injury when the defendant was working for UPS; (2) the defendant's substance abuse was not a factor in his pleading guilty; and (3) the defendant was of "average" intelligence, which would have been sufficient for him to understand the plea proceedings. The only part of Dr. Heilbronner's revised report that suggested the defendant had difficulty understanding the plea proceedings was his finding that the defendant had limited

knowledge of English. However, the issue of whether the defendant sufficiently understood English was addressed at the original hearing and the trial court specifically found that the defendant did adequately understand English. Accordingly, based on the entire record, the trial court did not abuse its discretion in denying the defendant's motion to withdraw his guilty plea.

¶ 21 For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed.

¶ 22 Affirmed.