2011 Ill. App. (2d) 100965-U
No. 2—10—0965
Order filed August 17, 2011

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 08—CF—1770
	)	
ROBERT PAS,	)	Honorable
	)	George J. Bakalis,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices McLaren and Schostok concurred in the judgment.

ORDER

Held: That defendant learned he had three years to live did not render his guilty plea involuntary; statute allowing probation where "extraordinary circumstances" exist is not unconstitutionally vague; and trial court did not abuse its discretion in determining extraordinary circumstances did not exist.

¶ 1 On January 15, 2010, defendant, Robert Pas, pleaded guilty to aggravated driving under the influence of alcohol (aggravated DUI) (625 ILCS 5/11–501(d)(1)(F) (West 2008)). Following a July 2010 sentencing hearing, the trial court sentenced defendant to nine years in prison. At the

sentencing hearing, the trial court denied defendant's motion to withdraw his plea and to reconsider his sentence.

¶ 2 Defendant maintains on appeal that (1) his guilty plea should be withdrawn based on a misapprehension of fact because he learned after pleading guilty that he had three years left to live, (2) the term "extraordinary circumstances" in the statutory sentencing provision which allows the trial court to grant probation is unconstitutionally vague, and (3) assuming the statute is not void for vagueness, the court abused its discretion by failing to find that extraordinary circumstances existed. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 As part of a five-count complaint, the State charged defendant with aggravated DUI pursuant to section 11–501(d)(1)(F) of the Illinois Vehicle Code (Vehicle Code) (625 ILCS 5/11–501(d)(1)(F) (West 2008)). Each count was based on the same collision. In January 2010, defendant pleaded guilty to count II, which alleged that defendant had committed aggravated DUI. That count alleged that defendant was in actual physical control of a 2008 Chevy Malibu while having a blood-alcohol concentration (BAC) of 0.08 or more, in violation of section 11-501–(a)(1) of the Vehicle Code (625 ILCS 5/11–501 (a)(1) (West 2008)) and that while violating section 11-501–(a)(1) he was involved in a motor-vehicle accident that was the proximate cause of Dawn Voss Alshwayit's death (625 ILCS 5/11–501(d)(1)(F) (West 2008)).

¶ 5 Under defendant's agreement with the State, defendant entered into an open plea, pleading guilty to Count II in return for the State's dismissal of the remaining counts. The State also agreed that it would not ask for more than 12 years' incarceration at the sentencing hearing. See *People v. Diaz*,192 Ill. 2d 211, 219 (2000) (noting that a defendant may enter into a "fully" negotiated plea of guilty, in which he agrees to plead guilty in exchange for the State's dismissal of charges and a

specific sentencing recommendation by the State). At the sentencing hearing, the trial court considered the pre-sentencing investigation (PSI), the State's factual basis for defendant's guilty plea during the January 2010 guilty plea hearing, and evidence the parties presented at the hearing. It established the following.

¶ 6 The factual basis for defendant's plea indicated that, on June 17, 2008, at approximately 11:20 a.m., defendant, while driving a 2008 Chevrolet Malibu, collided with an American Taxi van. Both vehicles were traveling southbound on I-55. Driving the American Taxi was Hatem Alshwayit, who was not working at the time. His wife, Dawn Voss Alshwayit, sat in the bench seat behind the front passenger seat. The accident report showed that defendant's car struck the van from behind. The collision caused the van to lose traction and control, veer across three lanes of traffic, and skid off the roadway. The van then struck a light pole and rolled over several times. Dawn was ejected from the vehicle. She was pronounced dead at the scene. Hatem had to be cut out of the van and airlifted to Good Samaritan Hospital. He was treated and had surgery on both arms and his torso.

¶ 7 Prior to the collision, witnesses revealed that defendant had difficulty keeping his vehicle in his lane and was traveling at a high rate of speed. The crash data recorder indicated that defendant was traveling at 110 miles per hour three seconds before his airbag deployed and 96 miles per hour, one second prior to the deployment of the airbag. When police responded to the scene, defendant was still in his vehicle, having pulled over after the collision. Defendant appeared to be incoherent. Soon after police responded, defendant was transported to LaGrange Hospital for treatment of his injuries. Officers inspected the vehicle and found an open bottle of vodka near the driver's side door. During the course of treatment at the hospital, blood was drawn by the nurses and showed that defendant had a BAC of approximately .331.

¶ 8 In addition, the State presented evidence that defendant had been involved in two prior DUI offenses. One occurred in 1993 and the other in 2000. The latter offense which was reduced to reckless driving. The prosecution also presented three victim-impact statements: one from the victim's husband Hatem Alshwayiat; one from the victim's mother, Maureen Elizabeth Voss; and one from the victim's brother, Ryan Voss. Each statement told of their love for the victim and how defendant's decision to drink and drive affected them.

¶ 9 Defendant presented evidence of a long history of alcohol abuse and health issues, including diabetes, anemia, and chronic liver disease. A little less than a month before the January 2010 guilty-plea hearing, defendant was transferred from jail to the hospital. His doctors elected not to perform surgery because they believed it would entail a significant chance of death. Instead, a tube was inserted into his gallbladder to drain it. Despite losing a considerable amount of weight and having stomach pains, defendant declared he was fit to enter a plea of guilty. At the July 2010 sentencing hearing, defendant presented a report from his doctor disclosing that he had end-stage liver disease, a terminal illness. End-stage liver disease starts with difficulty of bile flow, which results in gallbladder failure. Next comes abdominal swelling, where liquid has to be drained from the abdomen, something that the report indicated happened multiple times to defendant. Subsequently, a buildup of toxins occurs in the brain, which leads to memory loss and confusion. While in jail, defendant was found unresponsive and had his slippers on backwards while talking about his deceased father. The report also indicated that someone in defendant's position normally has fewer than three years to live without a transplant, which is not available to defendant. Further, defendant reported that he was the sole caretaker of his ailing mother and a few years back, devoted his life to care for his now deceased father, who was paralyzed. Numerous letters were also written on behalf of the defendant. Defendant pointed out that under the applicable sentencing statute, the

trial court is allowed to sentence an offender defendant to probation if "extraordinary circumstances" exist. Defendant argued that he should be sentenced to probation because his terminal illness constituted an extraordinary circumstance. He identified other cases which have found such a situation to be "extraordinary" and the federal compassionate-release statute. 18 U.S.C. 3582 (C)(1)(a)(I) (2002).

¶ 10 Ultimately, the trial court sentenced defendant to nine year's imprisonment. In aggravation, the trial court alluded to the fact that defendant had been drinking large quantities for a long time, drove at an exceedingly high rate of speed, and had previous DUI convictions. The trial court also highlighted the impact of defendant's choice to drink and drive on both victims and their families and the need for deterring similar conduct in the future. In mitigation, the court acknowledged that defendant had accepted responsibility for his crime by pleading guilty and his role as primary caretaker for his mother. The court further noted defendant's declining health, but believed that defendant would have access to proper treatment while in the prison. Finally, the court found that other than defendant's alcoholism, he was a decent person. After sentencing, defendant presented a motion to withdraw his plea of guilty and to reduce his sentence, which was denied. When presenting his motion to withdraw, defendant's counsel admitted that "we always knew he had end-stage liver failure, [but] we never knew that he was terminally ill." This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 Defendant maintains on appeal that (1) his guilty plea was not voluntary and should be withdrawn because he learned after entering the plea that he had three years left to live (2) the statutory sentencing provision which allows the trial court to grant probation for "extraordinary circumstances" is unconstitutionally vague because it is subject to arbitrary and discriminatory enforcement and (3) assuming the statute is not void for vagueness, the court abused its discretion

by failing to find that extraordinary circumstances existed. We first address defendant's argument that it was an abuse of discretion to deny his motion to withdraw his guilty plea.

¶ 13 A. Whether Defendant can Withdraw his Plea

¶ 14 On appeal, defendant argues that the trial court erred when it denied his motion to withdraw his guilty plea. He points to two letters he received after the January 2010 guilty plea hearing that indicated he was suffering from end-stage liver disease and that his condition was terminal. Defendant maintains that because this information was not available to him prior to his guilty-plea hearing, his plea was based on a misapprehension of fact and therefore not voluntarily given. We disagree.

¶ 15 It is within the sound discretion of the trial court to determine whether a guilty plea may be withdrawn, and that decision will not be disturbed on appeal absent an abuse of that discretion. *People v. Turley*, 174 Ill. App. 3d 621, 625 (1988). An abuse of discretion occurs when the trial court's ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the trial court. *People v. Delvillar*, 235 Ill. 2d 507, 519 (2009). There is no absolute right to withdraw a guilty plea, and the burden is on the defendant to illustrate the necessity of withdrawing a guilty plea. *People v. Feldman*, 409 Ill. App. 3d 1124, 1128 (2011), quoting *People v. Dougherty*, 394 Ill. App. 3d 134, 140 (2009). It requires a showing that withdrawing a plea would correct a manifest injustice under the facts involved. *People v. Hillenbrand*, 121 Ill. 2d 537, 545 (1988). A plea may be withdrawn where it is based on a misapprehension of the facts or law made by defense counsel or another authority, where there is doubt as to the defendant's guilt, where the defendant has a defense worthy of consideration, or where the ends of justice will be better served by taking the case to trial. *People v. Davis*, 145 Ill. 2d 240, 244 (1991), quoting *People v. Morreale*, 412 Ill. 528, 531-32 (1952).

¶ 16 Defendant argues that his plea was made under a misapprehension of fact because he did not find out until after entering the plea that he was terminally ill. Whether a plea was entered under a misapprehension of law or fact goes to the question of whether the plea was voluntarily and intelligently made. *People v. Rutledge*, 212 Ill. App. 3d 31, 33-34 (1991). In order for a plea to be voluntary, a defendant must be informed only of the direct consequences of his or her plea. *People v. Manning,* 227 Ill. 2d 403, 415 (2008). Direct consequences include anything that affects the defendant's sentence and other punishment that the circuit court may impose. *People v. Williams,*188 Ill. 2d 365, 372 (1999). Any other consequence to the defendant which the circuit court has no authority over is deemed collateral. *Delvillar*, 235 Ill. 2d at 520. A defendant need not be informed of the collateral consequences of a guilty plea. See *Williams*, 188 Ill. 2d at 371. Anticipated or uncertain consequences are irrelevant to the validity of the guilty plea because the trial court is not in a "position to advise on all of the ramifications of a guilty plea personal to the defendant." *Williams*, 188 Ill. 2d at 371.

¶ 17 In the case at bar, defendant does not contend that there was a misapprehension of fact by someone in a position of authority. Instead, he argues, information about his health, which was unavailable to him at the time of his plea, renders his plea involuntary. However, the record reflects that, at the guilty plea hearing, the trial court carefully admonished him pursuant to Rule 402(a). It also reflects that defendant's plea was voluntarily given of his own free will and with the advice of his counsel. Defendant acknowledged that he understood that by pleading guilty he would be sentenced to a maximum of 12 years' imprisonment under an agreement with the State for the offense of aggravated DUI. Here, defendant points to no instance where the prosecutor, counsel, or court created or fostered a misapprehension of fact. To the contrary, defendant admits that he was advised of all the direct consequences of pleading guilty. Once properly admonished of the direct

consequences of his plea, it is then defendant himself who is capable of determining various personal factors like the length of his sentence relative to his health in making the decision to plead guilty.

¶ 18 Defendant points to the Arizona case of *State v. Dockery*, 169 Ariz. 527 (Ariz. App. 1991), in support of his contention that the denial of his motion to withdraw his guilty plea was an abuse of discretion. In *Dockery*, the defendant was originally charged with theft, a class 3 felony, enhanced by an allegation of a prior felony conviction. Though still denying guilt, the defendant entered into a guilty plea pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), in return for a stipulated sentence of 7.5 years imprisonment, half of the maximum for the alleged charge. An *Alford* plea occurs when the defendant does not admit guilt, but pleads guilty because the state has sufficient evidence to convict him. *Alford*, 400 U.S. at 31-39. After the defendant entered his plea, but before sentencing, the defendant learned that he had tested positive for human immunodeficiency virus (HIV), giving him a life expectancy of five to eight years. The trial court judge denied defendant's motion to withdraw his plea. The appellate court, over a dissent, found that the trial court abused its discretion in denying the defendant's motion to withdraw his plea. The *Dockery* court explained:

> "*Alford* pleas are disfavored, and we concluded that where, before sentencing, there is an objective reason for a defendant to reevaluate such a plea, he should be allowed to withdraw from it. Dockery had such an objective reason to reevaluate the plea. When he entered it, he was unaware that what he was agreeing to would cause him to spend the rest of his life in prison." *Dockery*, 169 Ariz. at 528.

¶ 19 We find defendant's reliance on *Dockery* misplaced, as that case is distinguishable. In the present case, defendant entered a conventional guilty plea. Different from an *Alford* plea, a traditional guilty plea involves a defendant admitting to the offense. Thus, unlike *Dockery*, defendant did not deny his guilt. Defendant does not claim that he has a viable defense and admitted

both through his counsel and in allocution that he had committed the offense. Also, unlike the defendant in *Dockery*, he did not move to withdraw his plea until after he was sentenced.

¶ 20 Moreover, in *Dockery,* the defendant was not aware that he had a serious medical condition at the time he pleaded guilty. Here, defendant stated at the guilty plea hearing that he was suffering from significant medical issues. Defendant had time to consider his medical history, which included chronic liver disease, diabetes, and end-stage renal disease. On December 19, 2009, prior to entering his plea, defendant underwent treatment for a gall-bladder condition due to difficulty in bile flow. At the sentencing hearing, defendant provided evidence this was the first sign of end-stage liver disease. In fact, when presenting his motion to withdraw, defendant's counsel admitted that "we always knew he had end-stage liver failure, [but] we never knew that he was terminally ill." Given that defendant was aware of the serious health problems from which he was suffering at the time of his guilty plea, we cannot say that he possessed insufficient information about his health to make an informed decision to plead guilty. See *Davis,* 145 Ill. 2d at 244 (a guilty plea may be vacated if there is "substantial objective proof showing that a defendant's mistaken impressions were reasonably justified"). Therefore, it was not an abuse of discretion to deny defendant's motion to withdraw his guilty plea.

¶ 21 B. Whether Section 11–501(d)(2) of the Vehicle Code is Unconstitutionally Vague

¶ 22 Defendant pleaded guilty to aggravated DUI, a violation of section 11–501(d)(1)(F) of the Vehicle Code (625 ILCS 5/11–501(d)(1)(F) (West 2008)). Relevant here, that section provides that aggravated DUI occurs when a person commits simple DUI and is "in a motor vehicle accident that resulted in the death of another person, when the [simple DUI is] a proximate cause of the death." 625 ILCS 5/11–501(d)(1)(F) (West 2008). Defendant contends that a portion of section 11–501 is unconstitutionally vague. He calls our attention to the following provision: "[Aggravated driving

under the influence] is a Class 2 felony, for which the *defendant, unless the court determines that extraordinary circumstances exist and require probation,* shall be sentenced to * * * a term of imprisonment of not less than 3 years and not more than 14 years if the violation resulted in the death of one person [.]" (Emphasis added.) 625 ILCS 5/11–501(d)(2)(G) (West 2008).

¶ 23 Although defendant raises his constitutional claim for the first time on appeal, the constitutionality of a criminal statute can be raised at any time. See *In re J.W.*, 204 Ill. 2d 50, 61 (2003). We begin with the presumption that all statutes are constitutional, and it is the burden of the party challenging the validity of the statute to demonstrate a constitutional violation. *People v. Greco*, 204 Ill. 2d 400, 406 (2003). If it can be done reasonably, we construe a statute so as to affirm its validity and constitutionality. *People v. Fuller*, 187 Ill. 2d 1, 10 (1999). A challenge to the constitutionality of a statute is a question of law, which we review *de novo*. *In re Lakisha M.*, 227 Ill. 2d 259, 263 (2008).

¶ 24 A statute will not be deemed void for vagueness if it is "explicit enough to serve as a guide to those who must comply with it." *General Motors Corp. v. Illinois Motor Vehicle Review Board,* 224 Ill. 2d 1, 24 (2007). Due process requires that a statute be sufficiently clear so that persons of common intelligence are not required to guess at its meaning or application. *People v. Ramos,* 316 Ill. App. 3d 18, 26 (2000). A sentencing statute does not satisfy due process "if its terms are so ill-defined that the ultimate decision as to its meaning rests on the opinions and whims of the trier of fact, rather than objective criteria." *General Motors Corp.*, 224 Ill. 2d at 24. However, due process does not require mathematical certainty and may be satisfied if "(1) the statute's prohibitions are sufficiently definite, when measured by common understanding and practices, to give a person of ordinary intelligence fair warning as to what conduct is prohibited; and (2) the statute marks

boundaries sufficiently distinct for judges and juries to administer the law fairly in accordance with the intent of the legislature." *Ramos,* 316 Ill. App. 3d at 26.

¶ 25 Defendant acknowledges that, in *People v. Winningham*, 391 Ill. App. 3d 476 (2009), an Illinois court has already determined that 11–501(d)(2) of the Vehicle Code (625 ILCS 5/11—501(d)(2) (West 2008)) is not unconstitutionally vague. However, he argues that the *Winningham* decision relied upon a mistaken understanding of Illinois Supreme Court case law regarding constitutional challenges to sentencing statutes. *Winningham* bears notable similarities to the present case. The defendant was involved in a motor vehicle collision which caused the death of one person and severe injuries to others. He was charged and subsequently pled guilty to aggravated DUI pursuant to section 11-501(d)(1)(F) of the Vehicle Code. He argued that he should have been given a sentence of probation instead of three years in the Department of Corrections because extraordinary mitigating circumstances existed. At the sentencing hearing, the defendant presented evidence that he did not have a criminal record and while serving as a lieutenant in the Williamsville fire department, he had saved numerous lives. Further, the defendant submitted a letter from counsel for the victim's estate, which showed defendant's willingness to assist the victim's counsel's pursuit of a dramshop suit against the tavern where the defendant had been drinking. The defendant also had approximately 80 to 90 letters from family, friends, and firefighters describing defendant's positive impact on their lives. The defendant appealed, claiming that section 11–501(d)(2) was unconstitutionally vague because it was subject to arbitrary and discriminatory enforcement.

¶ 26 The *Winningham* court held that section 11–501(d)(2) was not unconstitutionally vague, even though the legislature did not provide objective criteria relating to the application of "extraordinary circumstances." *Winningham*, 391 Ill. App. 3d 476, 484. Defendant argues that the *Winningham*

court incorrectly applied Illinois Supreme Court precedent because each time the Illinois Supreme Court upheld a challenge to a sentencing statute, they did so using words of limitation or delineation. We note, as the *Winningham* court did, that the Illinois Supreme Court has consistently rejected similar challenges to sentencing statutes, even death-penalty statutes. *Winningham*, 391 Ill. App. 3d at 483 (providing comprehensive list of cases upholding validity of sentencing statutes).

¶ 27 Defendant points to one case which is not cited in *Winningham* to support of his contention that "extraordinary circumstances," by itself, is unconstitutionally vague. In *People v. Williams*, 193 Ill. 2d 1 (2002), the Illinois Supreme Court again upheld a "jury's consideration of the aggravating factor cold, calculated and premeditated manner" located in the Illinois death-penalty statute. *Williams*, 193 Ill. 2d at 37; see 720 ILCS 5/9–1(b) (West 2008). The court dismissed defendant's claim that "premeditated" had the same meaning as "intent," thus rendering the statute unconstitutionally vague by making every first-degree murder subject to the death penalty. The court reasoned that "a murder committed pursuant to 'a preconceived plan, scheme or design' is one which is thought out well in advance of the crime." *Williams*, 193 Ill. 2d at 31. Defendant argues that because the supreme court used language to delineate what the legislature meant by "premeditated," which is reflected in the Illinois Jury Pattern Instructions, that extraordinary circumstances, by itself is unconstitutional. However, we disagree with defendant's interpretation of the *Williams'* holding.

¶ 28 In arriving at its decision to uphold the sentencing statute, the court did not state that the statute would be unconstitutional absent the clarifying language it supplied. Instead, it stated that "[w]hen [the statute] is read and applied in this plain and ordinary sense, as our prior decisions have done, the factor properly narrows the class of death eligible defendants ***." *Williams*, 193 Ill. 2d at 37. The *Williams* court's essential holding was that the terms themselves provided sufficient

objective criteria. See *Williams*, 193 Ill. 2d at 37. That the court further delineated what the Illinois legislature meant by "premeditated" simply does not render the statue unconstitutional. For the same reasons, we reject defendant's contention that "premeditated" was somehow saved from vagueness because it is further defined in the Illinois Pattern Jury Instructions. See Illinois Pattern Jury Instructions, Criminal, No. 28.03 (4th ed. 2000). We also note that terms such as "cold, calculated and premeditated manner" have continually been held constitutional without any clarification from the court. *People v. Williams*, 173 Ill. 2d 48, 94 (1996) *People v. Whitehead,* 116 Ill. 2d 425, 465 (1987); *People v. Albanese*, 104 Ill. 2d 504, 541-42 (1984); *People v. McLaurin*, 184 Ill. 2d 58, 99 (1996).

¶ 29 We also reject defendant's reliance on *People v. Lucas*, 132 Ill. 2d 399 (1989). The court in *Lucas* found that the term "exceptionally brutal and heinous behavior indicative of wanton cruelty" (720 ILCS 5/9–1(b)(7) (West 2008)) provided sufficiently objective criteria to guide the decision regarding the imposition of an appropriate sentence. *Lucas*, 132 Ill. 2d at 444. As such, it provides no support for defendant's position.

¶ 30 In light of the fact that established case law does not support defendant's arguments, defendant has not carried his burden of establishing error on appeal. Rather, we hold that *Winningham*, 391 Ill. App. 3d 476, was properly decided. It provides sound judgment regarding the constitutionality of section 11–501(d)(2) which is fully consistent with Illinois law. Therefore, we further hold that section 11–501(d)(2) is not unconstitutionally vague.

¶ 31 C. Whether Extraordinary Circumstances Existed

¶ 32 Defendant's final contention is that given his terminal illness, the sentence of nine years was excessive and this court should reduce the sentence or remand for a new sentencing hearing. The State argues that defendant cannot independently challenge his sentence because it was the result of

a partially-negotiated plea. Instead, he must move to withdraw his guilty plea. Thus, we must address whether defendant can challenge the length of his sentence or whether he waived any such attack.

¶ 33 In this case, defendant entered a partially-negotiated guilty plea, where he agreed to plead guilty and the State agreed to a sentencing cap. See *People v. Waller*, 317 Ill. App. 3d 390, 391 (2000). Such pleas are governed by contract law. *People v. Evans*, 174 Ill. 2d 320, 335 (1996). To that end, Illinois Supreme Court Rule 604(d) provides, in pertinent part:

> "No appeal shall be taken upon a negotiated plea of guilty challenging the sentence as excessive unless the defendant, within 30 days of the imposition of sentence, files a motion to withdraw the plea of guilty and vacate the judgment. For purposes of this rule, a negotiated plea of guilty is one in which the prosecution has bound itself to recommend a specific sentence, or a specific range of sentence, or where the prosecution has made concessions relating to the sentence to be imposed and not merely to the charge or charges then pending."

Having entered into a negotiated guilty plea, defendant's sole recourse is to move to vacate the plea.

¶ 34 We acknowledge that defendant did file a motion to withdraw his plea. On its face, Rule 604(d) would appear to allow a challenge to a sentence once such a motion is filed. The rule, however, has not been construed that way. Similar issues arose in *People v. Spriggle*, 358 Ill. App. 3d 447 (2005), and *People v. Haley*, 315 Ill. App. 3d 717 (2000). Like the defendant here, the defendants in both of those cases filed proper motions to withdraw negotiated pleas pursuant to Supreme Court Rule 604(d). In finding that the defendants were not entitled to attack their sentences, both courts observed that a defendant who enters into a negotiated guilty plea agreement should not be allowed to hold the State to its part of the plea bargain while unilaterally obtaining

reconsideration of the negotiated sentence. *Spriggle*, 358 Ill. App. 3d at 453, citing *Haley*, 315 Ill. App. 3d at 719. Further, entering a plea is "not a temporary and meaningless formality reversible at the defendant's whim" and can only be granted to correct a manifest injustice. *Spriggle*, 358 Ill. App. 3d at 453, quoting *People v. Evans*, 174 Ill. 2d 320, 326 (1996). The *Haley* court decried the notion that a defendant could challenge the severity of a sentence simply by the "*pro forma* act of filing a motion." *Haley*, 315 Ill. App. 3d at 720. This court agreed with the *Haley* court's conclusion that a defendant who is dissatisfied with his negotiated or capped sentence must not only (1) file a motion to withdraw his plea, but also (2) convince the trial court that the motion should be granted to correct a manifest injustice. *Spriggle*, 358 Ill. App. 3d at 454. If that motion is unsuccessful, the defendant may appeal from the court's denial of the motion, but may not challenge the severity of his sentence. *Spriggle*, 358 Ill. App. 3d at 454.

¶ 35 Accordingly, defendant may not challenge the severity of his sentence. Defendant was sentenced to a term of years within the range agreed to pursuant to the plea agreement. As we have rejected defendant's attempt to withdraw his plea, his sentence must now stand.

¶ 36 III. CONCLUSION

¶ 37 In light of the foregoing, the judgment of the circuit court of Du Page County is affirmed

¶ 38 Affirmed.