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2012 IL App (3d) 110883-U

Order filed September 10, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF) Appeal from the Circuit Court
ILLINOIS,) of the 12th Judicial Circuit,
) Will County, Illinois,
Plaintiff-Appellee,)
) Appeal No. 3-11-0883
v.) Circuit No. 09-CF-2955
)
MARCO RODRIGUEZ,) Honorable
) Daniel J. Rozak,
Defendant-Appellant.) Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Carter and Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* It was not an abuse of discretion for the trial court to deny defendant's motion to withdraw his guilty plea.

¶ 2 Pursuant to an open plea agreement, defendant, Marco Rodriguez, pled guilty to first degree murder (720 ILCS 5/9-1(a)(2) (West 2008)) and was sentenced to 20 years' imprisonment. Defendant filed a motion to withdraw his guilty plea, which the trial court denied. Defendant appeals, arguing the trial court abused its discretion in denying his motion. We affirm.

¶ 3

FACTS

¶ 4 On January 14, 2010, defendant was charged by indictment with two counts of first degree murder. 720 ILCS 5/9-1(a)(1), (a)(2) (West 2008). Defendant was subsequently represented by attorney Robert Loeb, who filed his appearance on July 30, 2010. After various continuances, the cause was eventually set for a jury trial on October 3, 2011.

¶ 5 On September 30, 2011, the Friday before defendant's Monday trial, defendant, who was accompanied by Loeb, pled guilty to one count of first degree murder in exchange for dismissal of the remaining count and a recommended sentence of 20 years' imprisonment. At the plea hearing, the trial court admonished defendant pursuant to Illinois Supreme Court Rule 402 (eff. July 1, 1997), and found a factual basis for the plea. The court admonished defendant that (1) he faced a possible sentence of 20 to 60 years' imprisonment if he were convicted; (2) by pleading guilty he was waiving his right to trial; and (3) he had a right to persist in a plea of not guilty. Defendant agreed he understood these admonishments, and confirmed he had fully discussed entering his plea of guilty with Loeb.

¶ 6 The court also asked whether any promises were made outside of court to induce him to plead guilty, and whether anyone forced, coerced, or threatened him in order to secure a guilty plea, and defendant answered in the negative. Defendant further confirmed his plea was made freely and voluntarily. The trial court accepted defendant's guilty plea, and sentenced him to 20 years' imprisonment.

¶ 7 Two weeks later, on October 18, 2011, the trial court granted defendant's motion to allow Loeb leave to withdraw from the case, and attorney Alfredo Acosta entered an appearance on defendant's behalf. On October 31, 2011, defendant filed a motion to withdraw his guilty plea,

supported by defendant's affidavit, arguing that the plea was involuntary.

¶ 8 In his affidavit, defendant averred that one week prior to October 3, 2011, his previous counsel, Loeb, visited defendant in jail and informed defendant of the 20-year offer from the State. Defendant told Loeb he would consider the offer. Loeb told defendant he had until October 3, 2011 to consider the offer. However, defendant was awakened on September 30, 2011, and was taken from the jail to the court without prior notice. Defendant averred that Loeb advanced the case on his own, and did not previously confirm that defendant would plead guilty. Once in court, Loeb informed defendant that if he did not take the plea offer that day, the offer would be withdrawn and defendant had a 30% chance of winning at trial. Loeb said if defendant did not take the offer, he "would get a lot more time and things would be worse for [him]."

¶ 9 On November 4, 2011, the court conducted a hearing on defendant's motion to withdraw the guilty plea and denied defendant's motion. Defendant appeals.

¶ 10 ANALYSIS

¶ 11 On appeal, defendant raises two claims of error. First, defendant submits his plea was involuntary because the unscheduled plea hearing put undue pressure on defendant to enter his guilty plea. Next, defendant contends Loeb gave defendant erroneous advice about the consequences of going to trial. Consequently, defendant argues the trial court abused its discretion by refusing to allow him to withdraw his guilty plea.

¶ 12 A defendant has no absolute right to withdraw a plea of guilty. *People v. Pullen*, 192 Ill. 2d 36 (2000). The defendant bears the burden of demonstrating sufficient grounds to support a motion to withdraw the plea. *People v. Stevens*, 324 Ill. App. 3d 1084 (2001). A motion to withdraw a guilty plea should be allowed where it appears that the plea was based on a

misapprehension of the facts or law or because of misrepresentation by counsel, that the defendant has a defense worthy of consideration, or where the ends of justice would be better served by a trial. *Pullen*, 192 Ill. 2d 36.

¶ 13 A trial court's decision whether to allow a defendant to withdraw a guilty plea is within the sound discretion of the trial court and will not be disturbed unless the court abused its discretion. *People v. Davis*, 145 Ill. 2d 240 (1991). An abuse of discretion occurs when the trial court's decision is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the trial court. *People v. Illgen*, 145 Ill. 2d 353 (1991).

¶ 14 In this case, the record shows the court asked defendant, at the time of the guilty plea, whether he understood he had a right to persist in a plea of not guilty. Defendant answered that he understood this right. Further, defendant advised the court that no one forced, coerced, or threatened him in order to secure a guilty plea, and confirmed that the plea was made by his own free will. Thus, contrary to defendant's contentions on appeal, the record does not indicate the plea was involuntary.

¶ 15 Next, defendant argues the unexpected scheduling and surprising nature of the guilty plea rendered it involuntary. In support of this contention, defendant relies on *People v. Morreale*, 412 Ill. 528 (1952), which determined a plea became involuntary, in part, due to hurried consultations with defendant and counsel's erroneous advice concerning probation. In contrast, this defendant had a few days to consider the State's offer even though he was called to court on Friday, unexpectedly days earlier than he had anticipated. However, the negotiated agreement presented to the court was identical to the offer counsel discussed with defendant.

¶ 16 In addition, the advice defendant received from Loeb accurately informed defendant that

he faced a possible term of imprisonment of 20 to 60 years if convicted. Defendant claimed that counsel told him he had a 30% chance of winning at trial and he would get a longer prison sentence if he went to trial. Counsel's assessment of the case did not render defendant's guilty plea involuntary. See *People v. Corby*, 139 Ill. App. 3d 214 (1985).

¶ 17 In this case, defendant had time before the entry of his guilty plea to consider the State's offer after conferring with his attorney. His attorney provided advice accurately stating the range of sentence defendant was facing. Finally, defendant advised the judge that he was freely and voluntarily entering a plea of guilty and accepting the State's offer. Accordingly, the trial court did not abuse its discretion by denying defendant's motion to withdraw his guilty plea. See *Davis*, 145 Ill. 2d 240.

¶ 18 CONCLUSION

¶ 19 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 20 Affirmed.