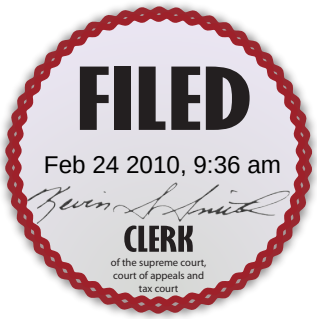

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IN THE
COURT OF APPEALS OF INDIANA

JEREMY D. JOHNSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 57A03-0909-CR-401
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE NOBLE CIRCUIT COURT
The Honorable G. David Laur, Judge
Cause No. 57C01-0812-FD-27
Cause No. 57C01-0809-FB-41

February 24, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Jeremy Johnson appeals the trial court's denial of his motion to withdraw guilty plea, in which he admitted to Manufacturing Methamphetamine, a Class B felony,[1] Maintaining a Common Nuisance, a Class D felony,[2] and violating the terms of his probation. We affirm.

Issue

Johnson raises two issues,[3] which we consolidate and restate as whether the trial court abused its discretion in denying his motion to withdraw guilty plea.

Facts and Procedural History

Police found in the trunk of Johnson's car items used to manufacture methamphetamine. He also admitted to having used his car to manufacture methamphetamine. The State charged Johnson with Manufacturing Methamphetamine, Maintaining a Common Nuisance, and Possession of Methamphetamine. The State also alleged that this conduct violated the terms of Johnson's probation for a prior unrelated felony conviction.

Attorney Diane Miller met once or twice with Johnson, appeared on his behalf, and negotiated a plea agreement with the State. Kenneth Johnson ("Kenneth"), Johnson's father,

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[1] Ind. Code § 35-48-4-1.1.

[2] Ind. Code § 35-48-4-13(b).

[3] Arguing in the alternative, Johnson makes a bald assertion that the sentencing order was inadequate because it did not reflect the parties' agreement that he could move to modify his sentence after serving six years. However, each issue presented by the appellant must be supported by cogent reasoning, including citation to legal authority. Ind. Appellate Rule 46(A)(8)(a). As Johnson presents no authority for the premise that a sentencing order must include every term in the plea agreement, we do not address this issue. See Infinity Products, Inc. v. Quandt, 810 N.E.2d 1028, 1031 n.1 (Ind. 2004).

went to Miller's law office to receive a copy of the plea agreement. Her secretary wrote the following note to describe Johnson's sentence:

> Move to modify [large letters on top half of page]
>
> Due [sic] 6 years [large letters on top half of page]
>
> [then in smaller letters on the bottom half of the page]
>
> Start out doing 6 years – then [Miller] can ~~get~~ [cross-out in original] move to get a modification[.]
>
> If [Johnson] gets his GED – take drug classes while in jail[4] – take college courses etc. – all this will cut down his time & [Miller] may be able to file for a modification sooner[.]

Exhibit 1.

Before the change-of-plea hearing, Miller, Johnson, and Kenneth met in a jury room to discuss the plea agreement "at length" – in Miller's words. Transcript at 122. Miller would later testify to the following:

> When I reviewed the plea with him I reviewed the total plea. I told him it would be a twelve-year sentence, but after he served six I could move to modify. And depending on what he did like he was incarcerated that time could be either [sic] further cut and that was the agreement. That he would serve six years and then it could be moved to be modified and that was included in the plea agree[ment].

Id. at 131. There was no question in Miller's mind that Johnson understood the agreement.

The parties submitted the proposed plea agreement providing that Johnson would admit to a probation violation and plead guilty to Manufacturing Methamphetamine and

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[4] A person may earn credit time while incarcerated by receiving, among other things, a general educational development diploma ("GED") and a certificate of completion of a substance abuse program. Ind. Code § 35-50-6-3.3(a, b).

Maintaining a Common Nuisance; the State would dismiss the third count. The agreement included the following regarding Johnson's sentence:

> Count 1: Twelve (12) years in the Indiana Department of Correction, ten (10) of which shall be executed and the remaining two (2) years suspended and served on probation. After Defendant has served the statutory minimum time of six (6) years,[5] Defendant may file a motion to modify the balance of the executed sentence to work release, home detention or probation.

Appendix at 137. The term for count II would be eighteen months and would be served concurrently with the twelve-year term on count I. The agreement "embodie[d] the entire plea agreement between the parties." Id.

The trial court began the change-of-plea hearing by stating,

> All right I have been handed a plea agreement indicating that you're going to be pleading guilty to Manufacturing Methamphetamine as a Class B felony and Maintaining a Common Nuisance, a Class D felony. Also, uh, you'd be receiving twelve years, uh, on count I, ten executed, two probation. After you've served, uh, six years you can file a motion to modify, uh, and the State would not oppose the filing of the motion.

Tr. at 22. The trial court found that Johnson understood the possible sentence, that he was voluntarily pleading guilty, and that there was a factual basis for the plea.

The next day, attorney Richard Thonert wrote Miller to explain that Johnson had retained him for a second opinion. Miller moved within weeks to withdraw from representing Johnson. Thonert then sent Miller three additional letters reiterating that he had been retained only for purposes of providing a second opinion. Meanwhile, the trial court made an entry in its Chronological Case Summary noting that Miller remained Johnson's

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[5] Because Johnson had a prior unrelated felony conviction, he had to execute at least six years for his Class B felony conviction in the instant matter. See Ind. Code §§ 35-50-2-2 and -5.

counsel.

On March 19, 2009, however, Thonert appeared on Johnson's behalf and filed a verified motion to withdraw plea, a motion to continue the sentencing hearing, and a motion to suppress evidence based upon the Fourth Amendment. The trial court granted Miller's motion to withdraw and continued the matter for an evidentiary hearing.

The trial court heard evidence over the course of two days and later denied Johnson's motion to withdraw his guilty plea, finding as follows:

> 1. Testimony of prior counsel [Miller] clearly reflects the content of the plea agreement was explained to Defendant.
>
> 2. Transcript of guilty plea clearly reflects that the content of the plea agreement was explained to the Defendant and the Defendant understood, was satisfied with counsel, and the plea was voluntarily and knowingly entered.

App. at 105. Johnson then filed a notice of appeal.[6]

Per the plea agreement, the trial court sentenced Johnson to a twelve-year term for Manufacturing Methamphetamine, with ten years executed and two years suspended to probation, and eighteen months for Maintaining a Common Nuisance, to be served concurrently. The trial court also imposed a 180-day term for the probation violation, to be fully executed and served consecutively to the other sentences.

Discussion and Decision

Johnson argues that the trial court should have granted his motion to withdraw plea because he has a learning disability and misunderstood the plea agreement. While the trial

[6] The denial of a written and verified motion for withdrawal of plea is a final judgment from which an appeal may be made. Ind. Code § 35-35-1-4(e).

court may allow the defendant to withdraw his guilty plea "for any fair and just reason unless the state has been substantially prejudiced by reliance upon the defendant's plea," the trial court shall allow the defendant to withdraw his plea "whenever the defendant proves that withdrawal of the plea is necessary to correct a manifest injustice." Ind. Code § 35-35-1-4(b). The movant, Johnson, has the burden of establishing his grounds for relief by a preponderance of the evidence. I.C. § 35-35-1-4(e). We review a trial court's decision on a motion for withdrawal of plea for abuse of discretion. I.C. § 35-35-1-4(b); and Smallwood v. State, 773 N.E.2d 259, 264 (Ind. 2002).

The record indicates that, although Johnson had difficulty reading, his attorney discussed the plea agreement with him at length and became convinced that there was no question Johnson understood the agreement. The note written by her secretary had referred twice to "doing 6 years." Ex. 1. The plea agreement was explicit that Johnson would receive a twelve-year term and that he could move to modify the balance of his executed sentence to work release, home detention, or probation – after he had "served the statutory minimum of six (6) years . . . ." App. at 137. Finally, the trial court began the change-of-plea hearing by stating clearly that Johnson was receiving a twelve-year term and that he would serve six years before being able to move to modify his sentence. Based upon this evidence, the trial court was within its discretion to deny Johnson's motion to withdraw his guilty plea.

Affirmed.

BAKER, C.J., and ROBB, J., concur.