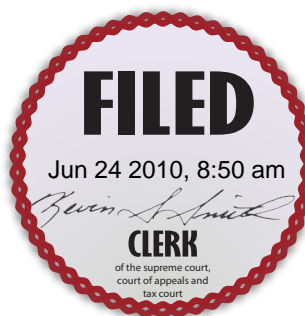


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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TERRENCE HOPSON,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 29A02-0912-CR-1239

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APPEAL FROM THE HAMILTON CIRCUIT COURT

The Honorable Paul Felix, Judge

Cause No. 29C01-0803-FB-24

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**June 24, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**FRIEDLANDER, Judge**

Terrance Hopson appeals from his conviction of burglary, a class B felony. He presents the following consolidated and restated issue for review: Did the trial court err by denying Hopson's motion to withdraw his plea of guilty?

We affirm.

On March 24, 2008, the State charged Hopson with class B felony burglary and class D felony theft. On April 22, 2009, pursuant to a plea agreement, Hopson pleaded guilty to the burglary charge, and the State dismissed the theft charge. The plea agreement further provided that Hopson would be sentenced to fourteen years with seven of those years suspended and the last two years of the executed sentence served in a work release program if Hopson was approved for the program. The trial court took the plea under advisement and set sentencing for July 23, 2009.

On July 10, 2009, Hopson mailed an unverified, pro-se letter to the trial court in an attempt to withdraw his guilty plea. Hopson stated:

This letter comes to the court because I was confused about my plea offer and was not fully informed about plea when I signed it. I was confused because I would have 7 yrs not 14 yrs. And that it was to be a cap on 7 yrs. I feel I was pressured in to signing. And I would like to withdraw this plea. I appreciate the courts [sic] time and efforts.

*Appendix* at 36. The trial court denied the request, noting that Hopson was represented by counsel and that no action would be taken until appropriate filings were made by defense counsel.

At the sentencing hearing, which was held on August 19, Hopson renewed the request to withdraw his guilty plea. He testified at the hearing, indicating that he felt pressured by his family and attorney into accepting the plea agreement, that he did not fully understand the

sentencing terms of the agreement, and that the State's case against him was weak. The trial court denied the motion, explaining:

on the day that the Defendant pled guilty I personally reviewed with him his understanding of the possible sentences, the potential sentence that he could receive by being found guilty or convicted of a Class B felony. I'll, therefore, find that he fully understood the potential range of a penalty for a Class B felony.... [A]fter I personally reviewed the terms of the plea agreement, I asked him if he understood the terms..., which he said he did understand. And finally, I asked him if he wanted me to accept this plea agreement based upon his understanding of the terms of the plea agreement, which he once again affirmed his desire for this Court to accept the plea agreement based upon the terms of the plea agreement. I, additionally – I don't always do this, and in this case I reviewed twice the terms of the plea agreement just to make sure the Defendant fully understood the terms of the plea agreement, that being a fourteen year sentence with seven years suspended. And both times I reviewed it with the Defendant, he acknowledged his complete understanding of the terms of the agreement. Not one time did he express any confusion or questions or ask me any questions in regards to the terms of the plea agreement. Furthermore and ultimately, I did ask him if this was a guilty plea that he wanted to do of his own free will and voluntary act, which he once again affirmed that he was doing. He did not express any concerns about being uncomfortable or being confused about the terms of the plea agreement. Therefore, I will – I do not find that there's any fair or just reason to in this particular case allow the Defendant to withdraw his guilty plea....

*Transcript* at 35-36. The trial court then accepted the guilty plea and sentenced Hopson according to the terms of the plea agreement. Hopson now appeals the denial of his motion to withdraw guilty plea.<sup>1</sup>

Motions to withdraw guilty pleas are governed by Ind. Code Ann. § 35-35-1-4 (West,

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<sup>1</sup> A defendant's failure to submit a verified, written motion to withdraw a guilty plea generally results in waiver of the issue of wrongful denial of the request. *Carter v. State*, 739 N.E.2d 126 (Ind. 2000). While the State asserts waiver on appeal, there is no indication that waiver was argued below. Therefore, we exercise our discretion to address the merits of Hopson's appeal.

Westlaw through 2009 1st Special Sess.). After the plea of guilty but before sentencing, a court may grant the motion for “any fair or just reason.” *Id.* The trial court, however, is required to grant the motion to prevent “manifest injustice” and is required to deny the motion when the State would be “substantially prejudiced.” *Id.* Our Supreme Court has explained appellate review as follows:

“The trial court’s ruling on a motion to withdraw a guilty plea arrives in our Court with a presumption in favor of the ruling. One who appeals an adverse decision on a motion to withdraw must therefore prove the trial court abused its discretion by a preponderance of the evidence. We will not disturb the court’s ruling where it was based on conflicting evidence.”

*Smallwood v. State*, 773 N.E.2d 259, 264 (Ind. 2002) (quoting *Johnson v. State*, 734 N.E.2d 242, 245 (Ind. 2000)) (internal citations omitted).

Hopson initially argues that the trial court was required to grant the motion to withdraw due to manifest injustice because he protested his innocence at the hearing on his request to withdraw his guilty plea, which was before the court formally accepted his plea. This argument fails on two grounds. First, at the hearing, Hopson never directly claimed that he was innocent. Second, even if he had proclaimed innocence at said hearing, Hopson did not maintain his innocence at the same time that he pleaded guilty at the change-of-plea hearing. Consequently, he did not have an absolute right to withdraw his guilty plea. *Carter v. State*, 739 N.E.2d at 130 (“[a] credible admission of guilt, contradicted at a later date by a general and unpersuasive assertion of innocence, may well be adequate for entering a conviction”).

Alternatively, Hopson asserts that the trial court abused its discretion by failing to allow withdrawal of the guilty plea for a fair or just reason. Hopson, however, offers no

independent argument in this regard in his appellant's brief, simply asserting that it is an abuse of discretion to deny such a motion when a defendant maintains his innocence prior to the court formally accepting the plea.<sup>2</sup> On the contrary, an appellant must establish an abuse of discretion based upon the specific facts of the case.

Our independent review of the record reveals no indication that Hopson's plea was involuntary or the result of force, threat, intimidation, or coercion. To be sure, defense counsel urged Hopson to accept the plea agreement. This advice appears to have been based upon counsel's sound professional judgment and valid assessment of the State's case against Hopson. *Cf. Centers v. State*, 501 N.E.2d 415, 419 (Ind. 1986) ("[s]ome degree of intimidation and confusion will always be present and be left on poignant occasions such as these, and is consistent with the requirement of a knowing, intelligent and voluntary plea of guilty"). Moreover, the trial court fully advised Hopson of, among other things, the terms of the plea agreement, and thereafter, Hopson freely and knowingly pleaded guilty.

As a general rule, withdrawals of guilty pleas prior to sentencing should be freely allowed whenever it appears fair or just and motions made within a few days of the initial pleading should be favorably considered. However, unless there is a manifest injustice shown, the decision to permit withdrawal is completely within the discretion of the trial court.

*Id.* Hopson has not established an abuse of discretion, let alone manifest injustice, in the denial of his motion to withdraw made nearly three months after pleading guilty.

Judgment affirmed.

KIRSCH, J., and ROBB, J., concur.

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<sup>2</sup> Hopson goes a bit further in his reply brief, arguing that he was not fully informed of the agreement's terms and that he entered into the plea agreement under duress.