



FILED

Jul 28 2010, 9:07 am

Kevin L. Smith

CLERK
of the supreme court,
court of appeals and
tax court

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**IN THE
COURT OF APPEALS OF INDIANA**

GERARDO BENSEZ,)
)
Appellant-Defendant,)
)
vs.) No. 03A01-0912-CR-611
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE BARTHOLOMEW SUPERIOR COURT
The Honorable Chris D. Monroe, Judge
Cause No. 03D01-0803-FA-635

July 28, 2010

DARDEN, Judge

STATEMENT OF CASE

Gerardo Bensez (“Bensez”) appeals his conviction, after his guilty plea, of one count of dealing in cocaine, a class B felony.

We dismiss.

ISSUE

Whether the trial court erred in convicting Bensez, because his guilty plea was not knowingly, voluntarily, and intelligently given.

FACTS

On March 31, 2008, the State charged Bensez with one count of dealing in cocaine, a class A felony, in Bartholomew County. On May 15, 2009, Bensez filed a motion to suppress evidence. A hearing was held on September 1, 2009 and on September 24, 2009, the trial court denied his motion. On September 28, 2009, Bensez filed a request for an expedited change of plea hearing, and he signed a waiver of rights. After the trial court found a factual basis had not been established, the matter remained scheduled for trial.

Pursuant to Bensez and the State reaching a second plea agreement, a hearing was held on October 12, 2009. A Spanish interpreter translated the proceedings. Bensez submitted his second signed waiver of rights. He testified that he understood: (1) the contents of the waiver of rights, including the fact that he would be giving up some constitutional rights by pleading guilty; (2) the possible minimum and maximum sentences; and (3) that the existence of a criminal record could increase any sentence he

might receive and could prevent the trial court from suspending a portion of his sentence. Further, Bensez's attorney stated that he had advised Bensez, prior to sentencing, that Indiana Code section 35-50-1-2(d) required his sentence in the instant matter "to be consecutive" to the sentence for his conviction in Marion County.¹ (Tr. 76). The trial court accepted Bensez's plea and sentenced him, on November 24, 2009, to fourteen years imprisonment with a minimum of six years to be executed and with no time suspended. The trial court ordered the underlying sentence to be served consecutively to his Marion County sentence.

DECISION

Bensez argues that his guilty plea was not knowing, intelligent, or voluntary because "he was not advised until sentencing that the trial court would not follow what he believed a Marion County trial court had mandated." (Bensez's Br. 5). Specifically, he argues that he believed that his Bartholomew County sentence would be served concurrent with the Marion County sentence. He now asks that we "vacate his plea of guilty and remand this case to the trial court." (Bensez's Br. 8).

Bensez signed the statement that he "underst[oo]d that by pleading guilty, he was waiving [his] right to appeal [the] conviction." (App. 87). One consequence of pleading guilty is the restriction of one's ability to challenge the conviction on direct appeal. *Stringer v. State*, 899 N.E.2d 748, 750 (Ind. 2009) (quoting *Tumulty v. State*, 666 N.E.2d 394, 395 (Ind. 1996)). The Supreme Court has created an avenue for claims addressing

¹ Bensez was already serving time on a case out of Marion County, at the time of his sentencing in Bartholomew County.

the validity of guilty pleas by adopting Indiana Post-Conviction Rule 1, which provides that post-conviction relief is the appropriate vehicle for pursuing claims regarding the validity of guilty pleas. *Id.*

Bensez's case is before us on direct appeal, not from the denial of a petition for post-conviction relief. Direct appeal is not the appropriate avenue for Bensez to challenge the validity of his plea of guilty. To seek a review of his guilty plea, Bensez's claim must be brought through a petition for post-conviction relief. *Id.*; *see also Crain v. State*, 875 N.E.2d 446, 447 (Ind. 2007); *see also Creekmore v. State*, 853 N.E.2d 523, 532 (Ind. 2006).² For the foregoing reasons, we dismiss Bensez's appeal.

Dismissed.

BAKER, C.J., and CRONE, J., concur.

² We note that the authority cited by Bensez to support his argument that he did not knowingly, voluntarily, and intelligently plead guilty, *Gumm v. State*, 655 N.E.2d 610 (Ind. 1995), and *Jackson v. State*, 676 N.E.2d 745 (Ind. 1997), are post-conviction relief cases.