FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-947

GEROD LEKEITH STUDEMIRE,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Duval County.
Mark Borello, Judge.

November 16, 2020

ROWE, J.

Gerod Lekeith Studemire appeals the trial court's order denying his motion to withdraw his plea before sentencing. Because Studemire did not show good cause to allow withdrawal of his plea, we affirm.

Facts

The State charged Studemire with (1) second-degree murder with a weapon for beating his former stepson to death with a baseball bat, (2) tampering with evidence for disposing of evidence connected to the murder, including burning the car used to move the victim's body, and (3) abuse of a dead body for burying the

victim's body in a shallow grave, digging up the body, and reburying the body in a different location.

After four days of trial and the presentation of about thirty witnesses, the trial court asked the parties if there had been any plea negotiations. Both sides responded that there had been no plea offers. The court informed Studemire that he had three choices. He could (1) proceed with the trial, (2) make an offer to the State to see if the State would accept it, or (3) enter an open plea to the court. Studemire responded, "I really don't want to proceed with this trial. I just want to - - like I say, I never really wanted to get to this point." Based on Studemire's response, the court gave him time to confer with his counsel, Gonzalo Andux.

When court reconvened, Andux announced that Studemire agreed to plead guilty to second-degree murder with a weapon and to plead no contest to abuse of a dead body. The State explained that it had agreed to drop the charge of tampering with evidence.

The trial court then conducted a plea colloquy. The court advised Studemire of the maximum penalty for each of his charges. Studemire affirmed that he had enough time to discuss the decision to enter a plea with Andux and that he was satisfied with Andux's representation. Studemire confirmed that he was not under the influence of any substance and that no one had threatened or coerced him into entering a plea. The trial court explained that Studemire had the right to continue with the trial and that he was giving up that right by entering a plea. Studemire stated that he understood the effect of entering a plea.

The trial court confirmed that Studemire had read the plea form and that he went over the form with Andux. Studemire attested that he read the front and the back of the form. He affirmed that he understood everything on the form. And he stated that he did not have any questions about the form. The trial court explained to Studemire how sentencing would work and determined that Studemire knew that he could receive consecutive sentences. The court accepted that Studemire's plea and found that it was knowingly and voluntarily entered.

But twenty-four days later and before sentencing, Studemire moved to withdraw his plea. He alleged that he did not "fully understand" his plea because he was "under a lot of pressure" and received "bad advice" from his family and Andux. He also alleged that Andux did not do a good job and was unprepared.

The trial court conducted an evidentiary hearing and then denied Studemire's motion to withdraw his plea. The court found that Studemire fell "woefully short of establishing any sort of good cause" to allow withdrawal of his plea. And the court found that there was no credible evidence that Studemire was under extreme pressure or that the plea was not freely, knowingly, and voluntarily entered.

The court sentenced Studemire to forty years' imprisonment for second-degree murder with a weapon and to a consecutive prison term of ten years for abuse of a dead body. This timely appeal follows.

Analysis

We review the court's ruling on a motion to withdraw a plea before sentencing for an abuse of discretion. *See Rentz v. State*, 285 So. 3d 1009, 1012 (Fla. 1st DCA 2019). Studemire has the burden to show that the trial court abused its discretion. *See id.*

A trial court has the discretion to allow a defendant to withdraw a plea before sentencing, but it must do so on a showing of good cause. *See* Fla. R. Crim. P. 3.170(f). A trial court should allow a defendant to withdraw a plea if the defendant entered the plea under "mental weakness, mistake, surprise, misapprehension, fear, promise, or other circumstances affecting [his] rights." *Rentz*, 285 So. 3d at 1012 (quoting *Robinson v. State*, 761 So. 2d 269, 274 (Fla. 1999)). But "[m]ere allegations are not enough; the defendant must offer proof that the plea was not entered voluntarily and intelligently." *Id.* at 1013. Studemire did not meet that burden.

Studemire argued first that he entered his plea under a misapprehension of his ability to fire his counsel. He asserted that Andux never told him that he could fire Andux and that Andux

never advised him that he could seek a *Nelson* hearing. Studemire claimed he wanted to fire Andux because Andux was not prepared for trial.

These arguments fail for two reasons. First, Studemire had no right to a *Nelson* hearing because his counsel was not court appointed, but privately retained. *See Branch v. State*, 685 So. 2d 1250, 1251 (Fla. 1996) (explaining that *Nelson* is inapplicable when privately retained counsel represents the defendant). Second, the record refutes Studemire's argument that he wanted to fire Andux. Studemire affirmed on the record after jury selection and during his plea colloquy that he was satisfied with counsel's representation. "Where a defendant enters a plea and swears that he is satisfied with his counsel's advice, he may not later attack counsel's effectiveness for failure to investigate or defend the charge." *Smith v. State*, 41 So. 3d 1037, 1040 (Fla. 1st DCA 2010). And so the trial court did not abuse its discretion when it found that Studemire's arguments related to his counsel failed to provide good cause for withdrawal of his plea.

Studemire next argued that the trial court should have allowed him to withdraw his plea because he was under a lot of pressure to enter a plea. But no record evidence supports this argument. The trial court gave Studemire and counsel time to discuss the plea. Neither asked for more time when court reconvened. Andux testified at the evidentiary hearing that he went over the plea form twice with Studemire. The first time was before trial when he and Studemire discussed coming up with a plea offer that would be acceptable to the State. The second time was just before Studemire entered his open plea to the court. Andux testified that Studemire did not have any hesitation about entering a plea. Studemire's statement at trial that he did not want to proceed with the trial corroborated Andux's testimony. Studemire cannot now go behind his sworn statements. *See Lynn v. State*, 286 So. 3d 357, 361 (Fla. 1st DCA 2019).

Because Studemire did not show good cause, we hold that the trial court did not abuse its discretion by denying his motion to withdraw the plea. The judgment and sentence are AFFIRMED.

ROBERTS and KELSEY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Andy Thomas, Public Defender, and Megan Long, Assistant Public Defender, Tallahassee, for Appellant.

Ashley Moody, Attorney General, and David Welch, Assistant Attorney General, Tallahassee, for Appellee.