

Third District Court of Appeal

State of Florida

Opinion filed June 26, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-803
Lower Tribunal No. 13-152-A-M

Stuart Collins,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Monroe County, Ruth L. Becker, Judge.

Carlos J. Martinez, Public Defender, and Susan S. Lerner, Assistant Public Defender, for appellant.

Ashley Moody, Attorney General, and Gabrielle Raemy Charest-Turken, Assistant Attorney General, for appellee.

Before SCALES, HENDON and MILLER, JJ.

SCALES, J.

Believing both that: (i) he would be sentenced to the time he had already served in jail; and (ii) the victim would not be testifying adversely at his sentencing

hearing, Stuart Collins openly pleaded¹ no contest to arson and criminal mischief. After the trial court sentenced Collins to a significantly longer sentence than the “time served” sentence Collins anticipated, Collins sought to withdraw his plea pursuant to Florida Rule of Criminal Procedure 3.170(1). In his *pro se* motion to withdraw his plea, Collins asserted that he had been misled by his lawyer,² and would never have openly pled no contest – waiving his right to a jury trial – had he not been assured by his lawyer that he would receive the “time served” sentence.

At the evidentiary hearing on Collins’s rule 3.170(1) motion to withdraw his plea, Collins’s lawyer refuted Collins’s allegations. After weighing the conflicting testimony and other evidence, the trial court entered the challenged order denying Collins’s motion.

We affirm because Collins failed to establish that withdrawal of the plea was necessary to correct a manifest injustice. Hamil v. State, 106 So. 3d 495, 497 (Fla. 4th DCA 2013). We affirm, though, without prejudice to Collins filing an appropriate and timely post-conviction motion.

¹ An open plea occurs when a criminal defendant pleads to a crime without having negotiated a plea deal with the prosecution. See Brant v. State, 21 So. 3d 1276, 1288 (Fla. 2009).

² While Collins is represented by the public defender in this appeal, he was represented by private counsel during the relevant portion of the proceedings below.

Affirmed.