Third District Court of Appeal

State of Florida

Opinion filed July 24, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-370
Lower Tribunal No. 16-9676

Charles Milton,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.140(b)(2) from the Circuit Court for Miami-Dade County, Richard L. Hersch, Judge.

Maria del Carmen Calzon, for appellant.

Ashley Moody, Attorney General, for appellee.

Before SALTER, FERNANDEZ, and LINDSEY, JJ.

PER CURIAM.

The appellant/defendant, Charles Milton, appeals the denial of his motion to vacate a plea of no contest, filed two weeks after his acceptance of the plea in an extensive colloquy in open court and his sentencing pursuant to the terms of the plea. Following our review of Milton's initial brief and the record, and pursuant to Florida Rule of Appellate Procedure 9.315(a), we affirm.

In June 2017, the State filed an amended information charging the appellant/defendant, Charles Milton, with: one count of attempted first degree murder; two counts of tampering with a witness, victim, or informant; and one count of perjury. On January 7, 2019, the case was set for trial and jury selection was about to begin. Counsel for the State and for Milton advised the trial court that Milton "is willing to plead guilty to a State prison sentence of 12 years in State prison, followed by five years of reporting probation." The State requested a special condition stay away order from the two victims in the case, and that provision was also accepted.

After that announcement, Milton asked to speak to the court in open court, which was allowed. He requested "a week furlough so that I can speak to my family" with a sentence of "25 years or whatever" to apply if he violated at the end of the furlough. The trial court declined that condition. Milton was duly sworn and the plea colloquy was conducted.

Toward the close of the colloquy, Milton told the court he wanted to ask for another attorney. The court inquired, "is there something specific that you wanted done, or that this lawyer is not doing for you?" In the absence of responsive concerns or complaints, the trial court offered Milton the opportunity to accept the plea or go to trial. Milton then told the court that he would take a plea, though he ultimately asked to plead "no contest" rather than "guilty." The trial court allowed him to do so, and Milton stated unequivocally and under oath that he wished to take the plea.

Three days after the plea and imposition of sentence, Milton's attorney[1] placed the case back on the trial court's morning calendar. Milton's counsel reported to the court that Milton had contacted her office through an intermediary to advise that "he wanted to withdraw his plea and he wanted it on the calendar." The court advised Milton's attorney that a written motion would be necessary before he would consider and rule on such a motion.

Two weeks after the plea, sentencing, and judgment, Milton filed his written motion to withdraw plea. The trial court heard the motion the following week. The trial court denied the motion without an evidentiary hearing, based on the sufficiency of the plea colloquy and the insufficiency of the claim of involuntariness under the requirements of Florida Rule of Criminal Procedure 3.170(*l*). This appeal followed.

Analysis

[1] Milton is represented here by successor counsel.

Rule 3.170(*l*) provides:

> (*l*) Motion to Withdraw the Plea after Sentencing. A defendant who pleads guilty or nolo contendere without expressly reserving the right to appeal a legally dispositive issue may file a motion to withdraw the plea within thirty days after rendition of the sentence, but only upon the grounds specified in Florida Rule of Appellate Procedure 9.140(b)(2)(A)(ii)(a)-(e) except as provided by law.

Milton did not expressly reserve the right to appeal a legally dispositive issue, so we turn to the "grounds specified in Florida Rule of Appellate Procedure 9.140(b)(2)(A)(ii)(a)-(e)":

> a. the lower tribunal's lack of subject matter jurisdiction;
> b. a violation of the plea agreement, if preserved by a motion to withdraw plea;
> c. an involuntary plea, if preserved by a motion to withdraw plea;
> d. a sentencing error, if preserved; or
> e. as otherwise provided by law.

The only grounds presented here allege involuntariness, Rule 9.140(b)(2)(A)(ii)(c), and the alleged "pressure" of having to begin a jury trial and facing a 25-year minimum mandatory sentence if convicted as charged. We have rejected similar allegations of "pressure" and "an intimidating threat" ("the possible sentence he could receive following a jury trial") as a basis for the withdrawal of a plea based on involuntariness or coercion. Dean v. State, 580 So. 2d 808, 810 (Fla. 3d DCA 1991); see also Mikenas v. State, 460 So. 2d 359 (Fla. 1984).

Following our review of the transcript of the plea colloquy, the purported grounds in the motion to withdraw plea, and the balance of the record, we affirm the trial court's denial of Milton's motion.