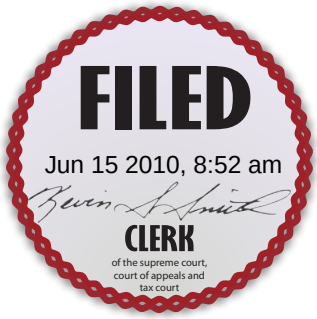

ATTORNEYS FOR APPELLANT:

ANDREW J. BORLAND
Borland & Gaerte
Indianapolis, Indiana

RUTH JOHNSON
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

JAMES E. PORTER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

BRANDON PUCKETT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0911-CR-1110
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Lisa F. Borges, Judge
Cause No. 49G04-0903-FB-35420

June 15, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Brandon Puckett appeals the trial court's denial of his motion to withdraw his guilty plea. Puckett raises one issue, which we revise and restate as whether the trial court abused its discretion by denying his motion to withdraw his guilty plea. We affirm.

The relevant facts follow. On March 27, 2009, the State charged Puckett with two counts of child molesting as class B felonies in connection with Puckett performing or submitting to sexual intercourse with D.M., a child who was under fourteen years of age, and two counts of child molesting as class C felonies in connection with Puckett performing or submitting to fondling or touching D.M. with the intent to arouse or satisfy the sexual desires of D.M. and/or Puckett.[1] Puckett and the State entered into a written plea agreement whereby Puckett agreed to plead guilty to one count of child molesting as a class B felony and the State agreed to dismiss the remaining three charges. In addition, the plea agreement stated that Puckett's sentence would be six years executed. On August 21, 2009, the trial court held a guilty plea hearing. Puckett, who was represented by counsel, pled guilty to one count of child molesting as a class B felony pursuant to the plea agreement, and the trial court accepted the guilty plea.

On August 31, 2009, Puckett, by new defense counsel, filed a motion to withdraw guilty plea, which the trial court denied. On September 3, 2009, Puckett filed a verified motion to withdraw guilty plea, alleging that in addition to his mental health defense, he "has a defense of a mistake of fact, as he thought the alleged victim was 16 years of age," that "his attorney told him he was God," and that Puckett was "not aware that he would

[1] Ind. Code § 35-42-4-3 (Supp. 2007).

have to serve six (6) years in prison and register as a sex offender, as his attorney did not apprise him of the same . . . ." Id. at 80-81.

At the beginning of Puckett's sentencing hearing the trial court heard evidence and arguments on his verified motion and denied the motion. Puckett was then sentenced to six years executed as provided in the plea agreement. Puckett filed a motion to correct error which the trial court denied.

The sole issue is whether the trial court abused its discretion in denying Puckett's motion to withdraw his guilty plea. Ind. Code § 35-35-1-4(b) governs motions to withdraw guilty pleas filed after a defendant has pleaded guilty but before the trial court has imposed a sentence. The trial court must allow a defendant to withdraw a guilty plea if "necessary to correct a manifest injustice." Brightman v. State, 758 N.E.2d 41, 44 (Ind. 2001) (quoting Ind. Code § 35-35-1-4(b)). By contrast, the trial court must deny the motion if withdrawal of the plea would "substantially prejudice" the State. Id. (quoting Ind. Code § 35-35-1-4(b)). In all other cases, the trial court may grant the defendant's motion to withdraw a guilty plea "for any fair and just reason." Id. (quoting Ind. Code § 35-35-1-4(b)).

"Manifest injustice" and "substantial prejudice" are necessarily imprecise standards, and an appellant seeking to overturn a trial court's decision faces a high hurdle under the current statute and its predecessors. Coomer v. State, 652 N.E.2d 60, 62 (Ind. 1995). "The trial court's ruling on a motion to withdraw a guilty plea arrives in this Court with a presumption in favor of the ruling." Id. We will reverse the trial court only for an abuse of discretion. Id. In determining whether a trial court has abused its

discretion in denying a motion to withdraw a guilty plea, we examine the statements made by the defendant at his guilty plea hearing to decide whether his plea was offered "freely and knowingly." Id.

Puckett acknowledges that a factual basis was established, that he was informed of the potential penalties for the offense, and that he was adequately informed of his rights. However, Puckett argues that this court should "look beyond the rote recitation of rights and form questions and instead look to the context of his act of pleading as presented in support of his Motion to Withdraw." Appellant's Brief at 12. Puckett further argues that he "presented a Physician's Report detailing [his] disabilities . . . ," that he was "pressured and misled by his attorney," and that "[w]hat gives this context is the failed first attempt of a guilty plea, followed by the contentious aftermath resulting in [Puckett's] removal from the courtroom, along with [Puckett's] confusion, stress, illness and his allegations that his attorney improperly pressured him." Id. at 12-13.

The State argues that Puckett "failed to show with specific facts that granting his motion to withdraw his guilty plea would be necessary to prevent a manifest injustice." Appellee's Brief at 8. The State argues that "[h]ere, [Puckett] presented nothing more than his self-serving assertions to support his claims" and that "[t]he trial court engaged in an extremely thorough colloquy with [Puckett] during the guilty plea hearing in which the court ascertained that [Puckett] understood all of his constitutional rights." Id. at 9-10.

We first consider the guilty plea hearing. At the guilty plea hearing, the trial court explained to Puckett that it could accept a guilty plea from him only if he actually

committed the crime. When the trial court asked Puckett if he was guilty, Puckett responded "[y]es" twice. Transcript at 5. However, when the court asked Puckett "what [he] did," Puckett stated that he had sexual intercourse with D.M. but that D.M. had "told [him] she was sixteen three times." Id. The trial court then asked the State for its opening statement, and the following exchange occurred:

> Mr. Puckett: What are we doing? What are we doing?
>
> The Court: Uh,
>
> Mr. Puckett: What are we doing?
>
> [Defense Counsel]: What? We're going to trial.
>
> Mr. Puckett: Pshh, aw! Hold on, hold on!
>
> * * * * *
>
> Mr. Puckett: Wait!! Wait!! Miss, miss, miss miss! Excuse me?!
>
> The Court . . . Be quiet or I'm going to have you removed! Be quiet!
>
> Mr. Puckett: Okay, I'm guilty!
>
> The Court: No!
>
> [Defense Attorney]: Oh!
>
> The Court: You just told me you didn't,
>
> Mr. Puckett: I don't . . . I don't . . .
>
> The Court: do anything wrong.

Id. at 6. After several additional exchanges between Puckett and the trial court, the court ordered Puckett not to talk and to behave. Puckett began moaning and making loud

noises from his position at the defense table, and the court ordered him removed from the courtroom.

Following the State's opening argument, Puckett was permitted to return to the courtroom and the following exchange occurred:

> Q. [Court]: All right. I understand from your attorney that you're telling me that you want to plead guilty now[.]
>
> A. [Puckett]: Yes, ma'am, I can.
>
> Q. is that right?
>
> A. Yes, I'm guilty.
>
> Q. Why do you want to plead guilty?
>
> A. Because I knew she was under fourteen. I'm guilty of all charges.
>
> Q. Okay. And you told me earlier that she had told you three times that she was sixteen, is that not the truth?
>
> A. That's not, that's not true.
>
> Q. Okay. So, you had sex with this girl that you knew was less than,
>
> A. Yes.
>
> Q. fourteen years old?
>
> A. Yes.

Id. at 12.

Puckett then admitted that he had sexual intercourse with D.M. and that he knew that she was twelve years old. The court then asked him a number of questions and advised him of his constitutional rights, and Puckett admitted that he went over the plea agreement with his attorney and that he initialed the paragraphs. The court explained the

potential sentence that Puckett could receive if he were to go to trial and be convicted. Puckett stated that he understood that the plea agreement required him to serve six years in the Department of Correction. The court also asked if Puckett was satisfied with the services of his attorney and if his attorney did everything Puckett wanted him to do, and Puckett responded affirmatively. Puckett also admitted that he was not forced or threatened in any way to plead guilty and that he was pleading guilty of his own free will. The trial court's questions suggest an appropriate attempt to probe beneath the surface of the plea agreement and determine that the plea was knowing and voluntary. See Coomer, 652 N.E.2d at 62.

In his verified motion to withdraw guilty plea, Puckett claimed that he "suffers from a mental illness for which he takes medication," that he "has a defense of mistake of fact, as he thought the alleged victim was 16 years of age," that he "felt forced into taking the Plea, despite the fact that he [] consistently maintained his innocence," that his "attorney told [him] that [his] mother and brother told him to take the Plea," and that he "was not aware that he would have to serve six (6) years in prison and register as a sex offender." Appellant's Appendix at 80-81. The motion also stated that: "Because he was still confused, Puckett told his [former] attorney he was awaiting a sign from God, and, according to Puckett, his attorney told him he was God. And, because he trusts God, Puckett then followed his attorney's advice. . . ." Id. at 81.

At the hearing at which his verified motion to withdraw guilty plea was addressed, Puckett claimed that at the time of the guilty plea "he would like look over to his attorney and his attorney would nod his head" to indicate how Puckett should answer the trial

court's questions. Transcript at 48. Puckett by counsel argued that "he plead [sic] guilty to something he didn't do" and that Puckett "wanted to go to trial but his attorney talked him out of it." Id. at 49. Puckett stated to the trial court that he had felt threatened and that he "wasn't fairly represented." Id. at 67. Puckett also stated that "the State got their stuff messed up" and that "[y]a'll got the evidence mixed up." Id. at 70. Upon being questioned by the trial court, Puckett acknowledged he did not believe that his former attorney was "God." Id. at 72. Also during the hearing on the verified motion, Puckett presented a physician's report which stated that Puckett "is not capable of making personal and financial decisions" and that he "is capable of making decisions that do not involve his health, education or financial matters." Defense Exhibit A at 2. The report also stated that Puckett was under the physician's care for "depressive disorder [], anxiety [], attention deficit hyperactivity disorder and borderline intellectual functioning," and that he "has limited intellectual functioning & borderline IQ" and "should reside in a supervised environment given his limited decision making ability." Id. at 1-2. Puckett also presented a list of medications that he had been prescribed. See Defense Exhibit B.

A defendant has the burden to prove by a preponderance of the evidence and with specific facts that he should be permitted to withdraw his plea. Ind. Code § 35-35-1-4(e); Smith v. State, 596 N.E.2d 257, 259 (Ind. Ct. App. 1992). We note that Puckett did not call his former attorney as a witness during the hearing on his motion, and that "[t]he trial court was entitled to infer that counsel would have testified otherwise had he been

called."[2] Coomer, 652 N.E.2d at 63. With respect to Puckett's claim at the hearing on the motion to withdraw that he did not commit the offense to which he had earlier pleaded guilty, Puckett essentially contended that he had lied under oath at the guilty plea hearing. The trial court was permitted to find his testimony less than credible. See Gipperich v. State, 658 N.E.2d 946, 949 (Ind. Ct. App. 1995) (holding that "[t]he trial court did not abuse its discretion in determining that [the defendant's] self-serving statements after the guilty plea hearing were incredible and constituted an attempt to manipulate the system" where the defendant alleged that he had lied at the plea hearing when he admitted to the charges), trans. denied.

Similarly, the trial court was permitted to find Puckett's testimony regarding the alleged conduct and statements of his former counsel, which was contrary to Puckett's testimony at the guilty plea hearing, to lack credibility. Puckett acknowledged that he did not believe that his former counsel was God.[3] Puckett succeeded in convincing the trial court that he knew what he was doing when he pled guilty and that his decision was not prompted by undue pressure. While there is always some chance that a defendant might give less than candid responses in such circumstances, we cannot say under the circumstances presented that the contradiction between Puckett's testimony at the guilty plea hearing and his subsequent claims of coercion present the factual basis necessary to overcome the presumption favoring the trial court's ruling. See Coomer, 652 N.E.2d at

[2] Indeed, Puckett's counsel at the hearing on the motion to withdraw guilty plea stated that she had contacted Puckett's former counsel and that his former counsel disputed Puckett's claims.

[3] When asked by the trial court if he thought his former counsel was God, Puckett replied: "No! I knew, that's 'cause I looked at him crazy when he said it, Your Honor! I worship only one God and that's the one up in heaven!"

62-63 (noting that the defendant's testimony did not provide the necessary factual basis to overcome the presumption favoring the trial court's ruling where there was a contradiction between the defendant's testimony at the guilty plea hearing and his subsequent claims of coercion); see also Brightman, 758 N.E.2d at 46 (holding that the trial court did not abuse its discretion in denying the defendant's request to withdraw his guilty plea where the trial court observed the defendant's testimony at the guilty plea hearing and the hearing on his request to withdraw and found that his testimony at the latter was not credible).

Further, with respect to Puckett's claims relating to his alleged borderline intellectual functioning, we see no indication during the guilty plea hearing (or during the hearing on the motion to withdraw) that Puckett was unaware of or confused by the proceedings. To the contrary, the record reveals that Puckett's responses were clear and that he was able to engage in discussions with the court and counsel. Also, with respect to his medications, Puckett did not establish or present evidence that his prescription medications affected his ability to knowingly or intentionally enter into a plea or that he was under the influence of any prescription medication at the guilty plea hearing. See Weatherford v. State, 697 N.E.2d 32, 36 n.9 (Ind. 1998) (noting, with respect to the defendant's claim that his ingestion of prescription medication rendered his decision unintelligent and involuntary, that the defendant "offer[ed] no evidence that he ingested medication or that medication rendered his decision involuntary other than his assertions to that effect"), reh'g denied.

Based upon our review of the record, we conclude that Puckett has not overcome the presumption of validity accorded the trial court's denial of his motion to withdraw guilty plea. Such a denial was within the discretion of the court, and we cannot say its refusal to allow Puckett to withdraw his guilty plea constitutes manifest injustice. See Coomer, 652 N.E.2d at 63 (holding that the refusal to allow defendant to withdraw his guilty plea did not constitute manifest injustice).

For the foregoing reasons, we affirm the trial court's denial of Puckett's motion to withdraw his guilty plea.

Affirmed.

NAJAM, J., and VAIDIK, J., concur.