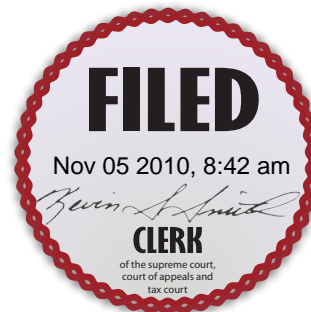


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

ANTONIO M. SANDERS,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 22A01-1005-CR-234

APPEAL FROM THE FLOYD CIRCUIT COURT
The Honorable J. Terrence Cody, Judge
Cause No. 22C01-0905-FB-1195

November 5, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Antonio M. Sanders and the State entered into a plea agreement which called for Sanders to plead guilty to Class B felony dealing in cocaine and the State to dismiss two other drug-related charges. In addition, the parties agreed that Sanders' sentence would be ten years with six years suspended to probation. Before the trial court accepted Sanders' plea, Sanders filed a motion for withdrawal from his plea agreement, which the trial court denied. Sanders now argues that because he filed his motion before the trial court accepted his plea, the court should have allowed him to keep his plea but argue for a different sentence. According to Indiana Code section 35-35-1-4(b), the dispositive factor is not the trial court's acceptance of the plea of guilty, but whether the defendant entered a plea of guilty. Because the State and Sanders entered into the plea agreement and Sanders pled guilty, it does not matter that the trial court had not yet accepted Sanders' guilty plea. We therefore affirm.

Facts and Procedural History

In May 2009 the State charged Sanders with Class B felony dealing in cocaine, Class D felony possession of cocaine, and Class D felony possession of marijuana. On January 11, 2010, the State and Sanders entered into a plea agreement. According to the plea agreement, Sanders agreed to plead guilty to Class B felony dealing in cocaine, and the State agreed to dismiss the remaining charges. In addition, the parties agreed that Sanders' sentence would be "10 years, 4 years to serve [in the Department of Correction]; 6 years suspended" to probation. Appellant's App. p. 33. At the guilty plea hearing held that same day, Sanders stated that he was pleading guilty to Class B felony dealing in

cocaine. The trial court advised Sanders of his rights, and a factual basis was established. The trial court took Sanders' guilty plea under advisement, ordered the preparation of a pre-sentence investigation report, and set the matter for sentencing on February 11.

Sanders posted bond on February 5 and was released from custody. The sentencing hearing was reset to March 18. On March 18, Sanders filed a motion to continue the sentencing hearing, and the hearing was reset to April 22.

At the April 22 sentencing hearing, Sanders orally moved to "withdraw from the [p]lea [a]greement." Tr. p. 16. He also filed a motion. Appellant's App. p. 44. Notably, Sanders did not ask that his guilty plea to dealing in cocaine be withdrawn; rather, he

simply ask[ed] that the Court reject the Plea Agreement that's been filed [because] some additional information has surfaced with Mr. Sanders while he's been out on bond, he's been able to do some things and we believe that if given the opportunity of an open sentence, we can present information as to the plea of guilty to Count One to guide the Court towards an appropriate sentence in this case.

Tr. p. 16. Sanders also pointed out that because the trial court had not yet accepted his guilty plea, he should be permitted to withdraw from the plea agreement. The trial court denied Sanders' motion, accepted his guilty plea, entered judgment of conviction for Class B felony dealing in cocaine, and sentenced him according to the terms of the plea agreement. Sanders now appeals the trial court's denial of his motion for withdrawal from his plea agreement.

Discussion and Decision

Sanders contends that the trial court erred in denying his motion for withdrawal from his plea agreement. Sanders claims that because the trial court had not yet accepted his guilty plea at the time he made his motion, the court should have "allowed [him] to

withdraw from the plea agreement, leaving the plea of guilty in place, and . . . allowed [him] to argue sentencing to the court as any other open plea.” Appellant’s Br. p. 6. The State responds that it does not matter that the trial court had not yet accepted his guilty plea because his plea had already been entered. The State is correct.

This Court addressed a similar issue in *Turner v. State*, 843 N.E.2d 937 (Ind. Ct. App. 2006), *reh’g denied*. There, the defendant argued that the trial court should have granted his motion to withdraw his guilty plea because at the time he filed his motion, the court had not yet accepted his plea. In addressing the issue, we noted that the trial court’s “acceptance” of the plea was not the dispositive factor. *Id.* at 941. We turned to Indiana Code section 35-35-1-4(b), which instead hinges on “entry” of the plea. Section 35-35-1-4(b) provides:

After *entry* of a plea of guilty . . . but before imposition of sentence, the court may allow the defendant by motion to withdraw his plea of guilty . . . for any fair and just reason unless the state has been substantially prejudiced by reliance upon the defendant’s plea. . . . [T]he court shall allow the defendant to withdraw his plea of guilty . . . whenever the defendant proves that withdrawal of the plea is necessary to correct a manifest injustice.

(Emphasis added). We then determined that the “entry” of a guilty plea and the trial court’s subsequent “acceptance” of that plea are two distinct stages of the plea process. *Turner*, 843 N.E.2d at 941. Indeed, we pointed out that our Supreme Court has already determined that a trial court’s permission is required to withdraw a guilty plea when the plea has not been accepted and the withdrawal request is based upon a protestation of innocence. *Id.* (citing *Carter v. State*, 739 N.E.2d 126, 131 (Ind. 2000)). Accordingly, we concluded that the defendant’s claim that the trial court abused its discretion when it

denied his motion to withdraw his guilty plea because the court had not yet accepted his plea was misplaced. *Id.*

Sanders' argument is also misplaced. Because the State and Sanders had already entered into a plea agreement and Sanders pled guilty, it makes no difference that the trial court had not yet accepted his plea. And because Sanders makes no argument on appeal that withdrawal of his guilty plea is necessary to correct a manifest injustice, the trial court did not abuse its discretion in denying his motion. We therefore affirm the trial court.

Affirmed.

MAY, J., and ROBB, J., concur.