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IN THE COURT OF APPEALS OF INDIANA

DONALD PETERS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 06A05-0908-CR-451
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE BOONE CIRCUIT COURT
The Honorable Rebecca S. McClure, Judge
Cause No. 06D02-0709-FA-1009

December 22, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Donald Peters ("Peters") pleaded guilty in Boone Circuit Court to Class C felony sexual misconduct with a minor and Class D felony child seduction. Peters thereafter filed a motion to withdraw his guilty plea, which the trial court denied. Peters appeals and claims that the trial court abused its discretion in denying his motion to withdraw his guilty plea.

We affirm.

Facts and Procedural History

From the summer of 2000 through February 2002, Peters, who was born in 1979, lived with his wife, his step-daughter N.S., and his adopted daughter H.P. When N.S. was sixteen or seventeen years old, Peters performed oral sex on her on ten to twelve separate occasions. Peters also had sexual intercourse with H.P. when she was fourteen years old. As a result of these incidents, the State charged Peters on September 14, 2007, with Class A felony child molestation and Class D felony child seduction. While these charges were pending, the trial court scheduled a jury trial which was continued several times at Peters' request.

On January 5, 2009, the day before his last scheduled jury trial, Peters agreed to plead guilty to Class C felony sexual misconduct with a minor and Class D felony child seduction, and the State agreed to dismiss the Class A felony child molestation charge. At a plea hearing held that same day, the trial court explained to Peters the rights he was giving up by pleading guilty and asked Peters if pleading guilty was truly his intent. Peters answered, "Yes." Tr. p. 15. The court also asked Peters if anyone had promised him anything or otherwise coerced him to plead guilty, and Peters responded, "No." Tr.

p. 13. The court then explained to Peters that he had to admit to committing the crimes charged.

The prosecuting attorney asked Peters, "did you place or did you have oral sex, place your tongue in the vagina of [N.S.]?" Tr. p. 18. Peters responded, "Yes." Id. Peters also admitted that this occurred when N.S. was sixteen or seventeen years old and his step-daughter.

With regard to his acts toward H.P., Peters admitted that she was fourteen years old at the relevant time. The prosecuting attorney then asked Peters, "did you have sexual intercourse with [H.P.] by placing your penis in her vagina?" Tr. p. 19. Peters initially said, "No." Id. This response was obviously unexpected, and Peters' trial counsel, attorney Michael Caudill, asked the court if he could speak with his client. The trial court agreed and ordered a brief recess. When the proceedings resumed, the following exchange took place between the prosecuting attorney and Peters:

> Q. Do you remember my question Mr. Peters?
> A. Yes.
> Q. And is it true?
> A. Yes.
> Q. [H.P.] stated that there was sexual intercourse and you admit and accept that in this hearing as a factual basis for this plea, is that correct?
> A. Yes.

Tr. p. 20.

The trial court still had concerns regarding Peters' responses, and the following colloquy took place:

> [Court]: Mr. Caudill, I do want to make sure because the Court did hear Mr. Peters say that he couldn't say that

	because to do so would be lying, and so I do want to make sure, because I've heard two different responses here.
[Caudill]:	I understand Judge.
[Court]:	Mr. Peters, as to the count, the new count, right?
[Prosecutor]:	Three. Count III.
[Court]:	Count III. Are you acknowledging to the Court now as you're sitting here that while you being over the age of eighteen, that you did in fact have sexual intercourse with [H.P.] when she was somewhere between the ages of fourteen and sixteen?
[Peters]:	Yes.

Tr. pp. 20-21. The trial court then granted Peters' motion to enter pleas of guilty, took the pleas and the plea agreement under advisement, and scheduled a sentencing hearing.

During Peters' pre-sentence investigation, Peters told the probation officer that he had been coerced by his attorney to plead guilty and that he had lied under oath when he admitted to committing the charged crimes. Because Peters was accusing him of forcing him to lie under oath and plead guilty, Caudill filed a motion to withdraw on February 2, 2009. The trial court then appointed another attorney to represent Peters, and on February 27, 2009, Peters filed a motion to withdraw his guilty plea.

The trial court held a hearing on Peters' motion to withdraw his guilty plea on March 17, 2009. At this hearing, Peters testified that he saw the plea agreement for the first time only five minutes before the guilty plea hearing. He also claimed that he did not have any opportunity to discuss the contents of the plea with attorney Caudill. When asked by his counsel whether "this [plea agreement] document was pretty much placed in front of you and you were told to sign it," Peters replied, "Basically, yes." Tr. pp. 35-36. Peters also testified that he wanted to withdraw his plea agreement "because [he was]

innocent." Tr. p. 36. When asked why he signed the plea agreement, Peters said, "I was basically going by what my attorney told me, that, to do what he said and I wouldn't have to go to jail." Id.

On cross-examination, Peters claimed that he did not remember the trial court asking him at the guilty plea hearing whether he had read the plea agreement, understood it, and had gone over it with counsel. Peters admitted that he knew that his guilty plea hearing was just one day before the scheduled jury trial and that the trial court told him that his plea of guilty would mean that there would be no jury trial.

The State then called attorney Caudill as a witness.[1] Caudill testified that the allegations against him were false, stating that he did go over the plea agreement with Peters, advised him of the "negatives and positives" of pleading guilty, and advised him of his constitutional rights. Caudill also testified that he thought Peters entered into the plea agreement voluntarily.

On cross-examination, Caudill admitted that he only had a few minutes before the hearing to explain the plea agreement with his client, but stated that he still had enough time to "go over every single word in the document" with Peters. Tr. p. 44. Caudill stated that he did not have as much time as he would have preferred, but explained that "we were trying to get the plea done so that we would not have to go to jury the next day." Id. Caudill also testified that, throughout his representation of Peters, he had discussed Peters' constitutional rights and believed that Peters was "well aware" of such

[1] Caudill testified that he had been practicing law for almost fifteen years, focusing primarily on criminal defense work.

rights. Tr. p. 45. In particular, Caudill testified that Peters knew of his right to a jury trial and that there was "no question in his mind that [Peters] understood what the plea agreement was . . . in the terms of . . . the parameters of sentencing[.]" Tr. p. 46.

After hearing argument from counsel, the trial court concluded:

> The first the Court knew of any suggestion that that was not a voluntary plea was after Mr. Peters met with his Probation Officer. And I don't know as I sit here whether Mr. Peters is continuing to try to manipulate the system. I mean this case has been pending for eighteen months. Continued all but one time by the Defendant. The day before trial, we're ready to go, we've got the jury summoned and then he wants to enter a plea of guilty. The Court believes that it has made a very thorough record that Mr. Peters was entering that plea voluntarily, that he had reviewed the Plea Agreement. He answered under oath that he was guilty of the crimes that had been committed. It is not the first time that the Court has had a defendant after a guilty plea decide that he doesn't really want to face the music, but that's not a manifest injustice. The Court does not believe that Mr. Peters has met his burden of proof. I am not going to set aside the guilty plea.

Tr. pp. 57-58.

On April 30, 2009, the trial court held a sentencing hearing. At this hearing, Peters' counsel asked if he had "admitted [his] guilt in this Court?" Tr. p. 93. Peters responded, "Yes I did." Id. He also claimed that he regretted what he had done and that his acts were "not consistent with [his] personality." Id. In arguing that the trial court should consider Peters' remorse as a mitigating factor, Peters' trial counsel stated:

> perhaps there was a time when [Peters] had difficulty understanding and admitting to himself that a crime or crimes took place here. But Your Honor you heard today Mr. Peters take the stand and look at [H.P.] and [N.S.] and apologize to them, and say he regretted what he did. And he acknowledged before this Court today his guilt.

Tr. p. 123. The trial court sentenced Peters to consecutive sentences of six years on the Class C felony conviction and two years on the Class D felony conviction. Peters now appeals.

Discussion and Decision

On appeal, Peters claims that the trial court erred when it denied his motion to withdraw his guilty plea. Pursuant to Indiana Code section 35-35-1-4(a) (2004):

> 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. . . . The ruling of the court on the motion shall be reviewable on appeal only for an abuse of discretion. However, the 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.

Our supreme court has held that this statute means that a trial court must grant a request to withdraw a guilty plea "only if the defendant proves that withdrawal of the plea 'is necessary to correct a manifest injustice.'" Coomer v. State, 652 N.E.2d 60, 61-62 (Ind. 1995) (citing I.C. § 35-35-4-1(a)). And a trial court must deny a motion to withdraw a guilty plea if the withdrawal would result in "substantial prejudice" to the State. Id. at 62. "Except under these polar circumstances, disposition of the petition is at the discretion of the [trial] court." Id.

As explained in Coomer, "'Manifest injustice' and 'substantial prejudice' are necessarily imprecise standards, and an appellant seeking to overturn a trial court's decision has faced a high hurdle under the current statute and its predecessors." Id. Therefore, "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. On review of a denial of a motion to withdraw a guilty plea, "we will not disturb the trial court's ruling where it is based on conflicting evidence." Weatherford v. State, 697 N.E.2d 32, 34 (Ind. 1998) (quoting Smith v. State, 596 N.E.2d 257, 258 (Ind. Ct. App. 1992)).

Here, even if we agreed with Peters that withdrawal of his guilty plea would not have resulted in "substantial prejudice" to the State, Peters has failed to establish that withdrawal of his guilty plea was "necessary to correct a manifest injustice." As such, we review the trial court's ruling only for an abuse of discretion. Coomer, 652 N.E.2d at 62. And under the facts and circumstances before us, we cannot say that the trial court abused its discretion in denying Peters' motion to withdraw his guilty plea.

Importantly, the charges against Peters had been pending for some time, mostly due to continuances sought by the defendant. The day before the last scheduled jury trial, Peters pleaded guilty—*after* the trial court informed him of his constitutional rights. We acknowledge that Peters was hesitant to admit to having engaged in sexual intercourse with his adopted daughter, and initially denied having done so. However, after speaking with counsel, Peters unequivocally admitted to his crime. When the trial court questioned Peters to make sure that he understood that he was admitting to having performed sexual intercourse with H.P., Peters confirmed that he did have sexual intercourse with H.P.

Peters' claims that attorney Caudill did not fully explain the plea to him was contradicted by Caudill's own testimony. Specifically, Caudill testified that he went over every word of the plea agreement with Peters, that there was "no question in his mind"

that Peters understood the agreement and was "well aware" of his rights. Caudill also testified that he thought Peters' plea was voluntary. Tr. pp. 44-46.

The trial court's statement at the plea withdrawal hearing that Peters' later claims of innocence might be another attempt to delay, as the trial court put it, "fac[ing] the music," is understandable within the context of the course of the case prior to the hearing. Tr. p. 58. Moreover, we cannot ignore that, at the sentencing hearing following the denial of his motion to withdraw his guilty plea, Peters again admitted to his crimes and apologized to his victims in an attempt to demonstrate remorse.

The fact that Peters may have changed his mind after he pleaded guilty is insufficient to establish that the trial court erred in denying his motion to withdraw his plea. See Davis v. State, 770 N.E.2d 319, 327 (Ind. 2002) (where trial court thoroughly questioned defendant regarding his understanding of the plea, court did not err in denying defendant's motion to withdraw his plea of guilty to being an habitual offender even though he "vacillated between pleading guilty and contesting the charges"). Under the facts and circumstances before us, the trial court did not abuse its discretion in denying Peters' motion to withdraw his guilty plea.

Affirmed.

BARNES, J., and BROWN, J., concur.