

STATEMENT OF THE CASE

William Roberts appeals the trial court's denial of his motion to set aside his guilty plea. He presents a single issue for our review, namely, whether the withdrawal of his plea is necessary to correct a manifest injustice.

We affirm.

FACTS AND PROCEDURAL HISTORY

On April 20, 2009, Roberts went to Tyson Brownlee's house in Floyd County to purchase "pills and perhaps marijuana[.]" Transcript at 48. Earlier, Roberts had discussed with Brandon Spalding that Roberts would let Spalding know when Roberts arrived at Brownlee's house. Roberts agreed to that arrangement knowing that Spalding planned to go to Brownlee's house with a group of men who intended to "beat up" Brownlee. *Id.* at 49. Roberts was present when Spalding and the others arrived and kicked in the door to Brownlee's house. Brownlee and Roberts were upstairs at the time. As Brownlee went downstairs to confront the intruders, Roberts struck Brownlee on the head and pushed him down the stairs. Once Brownlee was on the ground floor, Spalding and the other men attacked Brownlee. Roberts left Brownlee's house while the other men continued to beat Brownlee. After Roberts left, Brownlee also fled the scene, and the other men chased him and fired guns at him, but Brownlee evaded the bullets.

The State charged Roberts with attempted murder, a Class A felony, and criminal confinement, as a Class C felony. On October 14, 2009, Roberts entered into a plea agreement whereby he pleaded guilty to attempted aggravated battery, a Class B felony, with a ten-year executed sentencing cap, in exchange for the State dismissing the other

charges. The trial court held a guilty plea hearing and accepted Roberts' guilty plea. Shortly thereafter, Roberts changed his mind about his plea and wrote the trial court a letter, which was filed with the court on October 23. In that letter, Roberts maintained his innocence, stated that his attorney had pressured him into pleading guilty, and asked that new counsel be assigned. The trial court ordered that substitute counsel be appointed prior to sentencing.

On December 11, Roberts filed his motion to set aside his plea agreement in which he asserted his innocence and alleged that his mother and his guilty plea trial counsel had pressured him into pleading guilty. Following a hearing, the trial court denied that motion, entered judgment of conviction, and sentenced Roberts accordingly. This appeal ensued.

DISCUSSION AND DECISION

Roberts contends that the trial court abused its discretion when it denied his motion to set aside his guilty plea. In particular, Roberts maintains that withdrawal of his plea is necessary to correct a manifest injustice. We cannot agree.

In Fletcher v. State, 649 N.E.2d 1022, 1023 (Ind. 1995), our supreme court set out the applicable law as follows:

Pursuant to Indiana Code § 35-35-1-4(b), a trial court is authorized to allow a defendant to withdraw by motion his plea of guilty before the imposition of sentence. The statute continues:

The motion shall state facts in support of the relief demanded, and the state may file counter-affidavits in opposition to the motion. 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.

Ind. Code § 35-35-1-4(b). As a general rule, the withdrawal of a guilty plea before sentencing “should be freely allowed whenever it appears fair or just and motions made within a few days of the initial pleading should be favorably considered.” Centers v. State (1986), Ind., 501 N.E.2d 415. The statute contains no express requirement for a hearing. A defendant seeking to withdraw his plea “has the burden of establishing his grounds for relief by a preponderance of the evidence.” Ind. Code § 35-35-1-4(e). When a defendant moves to withdraw a guilty plea before sentencing, the trial court’s ruling is reviewed only for abuse of discretion. Trueblood v. State (1992), Ind., 587 N.E.2d 105, 110, cert. denied, 506 U.S. 897; Centers, 501 N.E.2d at 419. Appellate courts will indulge a presumption in favor of the trial court’s ruling. Centers, 501 N.E.2d at 419.

Here, at the hearing on his motion to set aside, Roberts testified that his trial counsel pressured him into pleading guilty by claiming that he “would be convicted because [he is] a young black man who looks like a thug” and that he would be sentenced to fifty years if he did not plead guilty. Transcript at 77. Roberts also testified that “what really made [him] take the plea” was a conversation with his mother after his trial counsel had talked to her and “had her all stressed out and crying and stuff.” Id. at 80. Finally, Roberts testified that his trial counsel persuaded him to lie during the guilty plea hearing. In light of his testimony, Roberts contends on appeal that the evidence is “uncontroverted” and supports a determination that withdrawal of his guilty plea is necessary to correct a manifest injustice. Brief of Appellant at 9.

But Roberts was the only witness who testified at the hearing on his motion to set aside. Roberts did not call either his trial counsel or his mother to testify. And the trial court, as factfinder, was entitled to judge the credibility of Roberts’ testimony. Clearly,

the trial court did not find Roberts' testimony credible, and we will not reassess Roberts' credibility on appeal. The evidence supports the trial court's determination that

The Defendant's guilty plea was accepted after full advisements regarding the charge, constitutional rights, possible penalties and examination of competency and the establishment of a factual basis. The Defendant did not assert his innocence at any point during the hearing. Based upon the Court's observations of the Defendant's demeanor, posture, and behavior, the Court found that the factual basis was properly established. The Defendant was specifically examined regarding whether his plea was being entered knowingly and voluntarily or whether it was induced by a promise for leniency, threat of force or coercion. The Defendant was also specifically examined regarding whether the representation of him by [trial counsel] was satisfactory. The Defendant's demeanor and responses indicated to the Court that the Defendant's plea was voluntary and that he was satisfied with the representation of [trial counsel].

Appellant's App. at 92-93. Roberts has not demonstrated that granting his motion to set aside his guilty plea is necessary to correct a manifest injustice. His argument on appeal amounts to a request that we reweigh the evidence, which we will not do. The trial court did not abuse its discretion when it denied Roberts' motion.

Affirmed.

DARDEN, J., and BAILEY, J., concur.