

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Curtis A. Schorey,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 21, 2023

Court of Appeals Case No.
23A-CR-1802

Appeal from the Wells Superior
Court

The Honorable Davin G. Smith,
Special Judge

Trial Court Cause No.
90C01-2208-F2-4

Memorandum Decision by Judge Bailey
Judges May and Felix concur.

Bailey, Judge.

Case Summary

- [1] Curtis Schorey appeals the trial court’s denial of his motion to withdraw his guilty plea. Schorey raises one issue for our review, namely, whether the court abused its discretion when it denied his motion. We affirm.

Facts and Procedural History

- [2] On July 15, 2022, a controlled informant purchased methamphetamine from Schorey. Then, on July 30, a controlled informant purchased methamphetamine and fentanyl from Schorey. Both controlled buys were recorded with audio and visual equipment. As a result, the State charged Schorey with two counts of dealing in methamphetamine, as Level 2 felonies (Counts 1 and 2),¹ and one count of dealing in a narcotic, as a Level 5 felony (Count 3).² The State also alleged that he was a habitual offender (Count 4).³
- [3] On May 8, 2023, Schorey and the State entered into a plea agreement. Pursuant to that agreement, Schorey agreed to plead guilty to Count 1, and the State agreed to seek the dismissal of the remaining counts. In addition, the

¹ Ind. Code § 35-48-4-1.1(e)(1) (2022).

² I.C. § 35-48-4-1(a)(1).

³ I.C. § 35-50-2-8(d).

parties agreed that Schorey would be sentenced to thirty years, with twenty-five years executed, five years suspended, and two years on probation. That same day, the court held a change of plea hearing, where Schorey was represented by his second attorney since the start of the proceedings. During the hearing, the court confirmed that Schorey had “initial[ed]” and “sign[ed]” the document. Tr. at 40-41. The court also reviewed the sentence to which Schorey had agreed. The court proceeded to ensure that Schorey “fully underst[ood his] constitutional rights” by outlining his rights and that he understood that he was “waiv[ing] and giv[ing] up” those rights by pleading guilty. *Id.* at 42-43.

[4] The court read the charge as outlined in Count 1 and asked if Schorey understood that, by pleading guilty, he was “admitting that [he] committed the crime[.]” *Id.* at 44. Schorey responded in the affirmative. The court continued its colloquy with Schorey, during which Schorey stated that no one had “forced” or “threatened” him to enter into the guilty plea and that the decision to plead guilty was “his own free choice and decision.” *Id.* at 45. The State then laid a factual basis for the plea by asking if Storey had knowingly or intentionally delivered methamphetamine in excess of ten grams to another person, and Storey responded: “Yes.” *Id.* at 47. The court found that Storey understood “the nature of the charge to which he . . . plead guilty today” as well as the “possible sentence,” that his plea was offered “freely and voluntarily,” and that there was a factual basis for the plea. *Id.* The court took the matter under advisement, scheduled a sentencing hearing, and ordered that a presentence investigation report be prepared.

[5] On June 29, while represented by his third attorney, Schorey filed a motion to withdraw his guilty plea. In that motion, Schorey alleged that, since he had entered into the plea agreement, he had “time to reflect on the plea of guilty” and that he desired “to withdraw the plea and to go to trial.” Appellant’s App. Vol. 2 at 93. In support of his request, Schorey asserted “his innocence” to the charges, that his first public defender “never met with [him] outside of a court hearing,” that his second public defender only met with him “one time for approximately ten (10) minutes,” and that a prior attorney told him that “if he did not accept the State’s plea offer [he] could be looking at 120 years of incarceration.” *Id.* Schorey also asserted that the State had not been “substantially prejudiced by any reliance on the plea” and that the withdrawal of the plea was “necessary to correct a manifest injustice.” *Id.*

[6] The court held a sentencing hearing on August 4 at which the court heard argument on Schorey’s motion. At the hearing, Schorey again asserted that he had had two prior attorneys, one of whom only met with him “very briefly” and one of whom he had only “minimal contact” with. Tr. at 61. He also asserted that he had signed the agreement “in the heat of moment” after his attorney told him: “you need to take this or you may be looking at virtually a life sentence[.]” *Id.* And he alleged that he did not “get the chance to really review the case,” including the State’s discovery before he signed the agreement. *Id.* The State responded that Schorey’s attorney had “very likely” made the statement regarding a life sentence because of the charges he faced and because he was fifty-one years old. *Id.* at 62.

[7] At the conclusion of the hearing, the court determined that the plea was “voluntarily made” and “done willingly and knowingly” and that “all the proper advisements were given[.]” *Id.* at 64. Accordingly, the court denied Schorey’s motion to withdraw and accepted the guilty plea. The court then entered judgment of conviction on Count 1, dismissed the remaining counts, and sentenced Schorey pursuant to the terms of the agreement. This appeal ensued.

Discussion and Decision

[8] Schorey asserts that the trial court abused its discretion when it denied his motion to withdraw his guilty plea. As the Indiana Supreme Court has explained:

Indiana Code § 35-35-1-4(b) governs motions to withdraw guilty pleas. After a defendant pleads guilty but before a sentence is imposed, a defendant may motion to withdraw a plea of guilty. *Id.* The court must allow a defendant to withdraw a guilty plea if “necessary to correct a manifest injustice.” *Id.*

By contrast, the court must deny the motion if withdrawal of the plea would “substantially prejudice[]” the State. *Id.* In all other cases, the court may grant the defendant’s motion to withdraw a guilty plea “for any fair and just reason.” *Id.*

A trial court’s ruling on a motion to withdraw a guilty plea “arrives in this Court with a presumption in favor of the ruling.” *Coomer v. State*, 652 N.E.2d 60, 62 (Ind. 1995). 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.*

Brightman v. State, 758 N.E.2d 41, 44 (Ind. 2001) (footnotes omitted; alteration original to *Brightman*).

- [9] On appeal, Schorey asserts that he did not enter into his plea knowingly because he “had only minimal contact” with his two attorneys and because he was “improperly counseled by his first two attorneys and essentially coerced under the guise of receiving up to 120 years if he didn’t accept the State’s plea offer.” Appellant’s Br. at 20. He also contends that he did not have an adequate opportunity to review the State’s evidence against him. Further, he asserts that the State “failed to enumerate how it would be, or was, harmed in reliance upon Schorey’s accepting its plea offer.” *Id.* at 21. And he contends that the withdrawal of his guilty plea is necessary to correct a manifest injustice.
- [10] Regarding his argument as to prejudice to the State, we note that the State is not required to prove that it was prejudiced before the court can deny Schorey’s motion. Rather, if the withdrawal of a guilty plea would substantially prejudice the State, then the court “must” deny the motion to withdraw. *Brightman*, 758 N.E.2d at 44. But where, as here, the State does not allege or prove substantial prejudice, the court has discretion to deny the motion. *See id.* Thus, the fact that the State did not prove that it would be prejudiced by the withdrawal is of no consequence.

[11] As for his other arguments, we are not persuaded that Schorey did not enter into his plea knowingly or voluntarily. First, the record makes it clear that Schorey was advised of the charges against him and the possible penalties several times. Indeed, at his initial hearing, the court asked whether Schorey had a copy of the charging information. Schorey indicated that he did and informed the court that it did not need to read the charges or the legal definitions. Rather, he stated: “I think I understand the charges.” Tr. at 8. The court then proceeded to inform Schorey of the sentencing ranges for a Level 2 felony, a Level 5 felony, and a habitual offender enhancement. Schorey had no questions on the possible sentences.

[12] Then, at the change of plea hearing, the court confirmed that Schorey had initialed and signed the plea agreement “along with” his second attorney and that Schorey was aware of the sentence he would face if the court accepted his plea. *Id.* at 41. In addition, the court informed Schorey that he could “speak with [his attorney] at any point[.]” *Id.* at 42. Schorey then confirmed that he knew the rights he was waiving, that he had committed the crime as charged in Count 1, that he understood the penalty, and that no one had “forced” or “threatened” him into pleading guilty. *Id.* at 43-45. After a thorough discussion with the court, Schorey still confirmed that it was his “intention to plead guilty” and that his guilty plea was “his own free choice and decision.” *Id.* at 45. The State then laid a factual basis, and Schorey admitted to having sold more than ten grams of methamphetamine. *Id.* at 47.

[13] In other words, Schorey told the trial court that he understood the charges, that he was freely and voluntarily entering into the plea, and that there was a factual basis for his plea. If at any point Schorey felt that he needed more time to consult with his attorney to either seek advice on pleading guilty or to review the State’s evidence against him, he could have taken advantage of the opportunity to speak with his attorney that the court afforded him. Further, Schorey does not claim or direct us to any evidence to show that his constitutional rights were violated. We are not convinced that, had Schorey had additional time with his attorney or had his attorney not told him he was effectively facing a life sentence, he would have rejected the plea.⁴

[14] Finally, Schorey’s proclamation of innocence does not require the court to withdraw his plea. *See Carter v. State*, 739 N.E.2d 126, 128 (Ind. 2000). As our Supreme Court has stated, “as a matter of law . . . a judge may not accept a plea of guilty when the defendant both pleads guilty and maintains his innocence at the same time.” *Id.* at 129. However, “[t]here is a substantive difference between a defendant who maintains innocence but asks the court to impose punishment without trial, and one who concedes guilt in one proceeding but contradicts that admission by claiming innocence in a later proceeding.” *Id.* at

⁴ Rather, Schorey’s decision to plead guilty to one Level 2 felony appears pragmatic in light of the strong evidence in support of the State’s case, namely, the audio and visual recordings of the two controlled buys, as well as the possible total sentence he faced for the remaining counts. *See* Ind. Code §§ 35-50-2-4.5 (outlining the sentencing range for Level 2 felony as ten to thirty years); 35-50-2-6 (outlining the sentencing range for a Level 5 felony as one to six years); and 35-50-2-8 (outlining the sentencing range for the habitual offender enhancement as eight to twenty years for a person convicted of a Level 2 felony).

130. During the guilty plea hearing, Schorey repeatedly assured the trial court that he understood what he was doing when he entered the guilty plea and that he did so of his own free will. And, again, Schorey stated that he entered into the plea without fear of threat or any offering of inducements to take the plea. There was no evidence of equivocation from Schorey when he accepted the State's deal and pleaded guilty. Schorey has not demonstrated that the withdrawal of his guilty plea is needed to correct a manifest injustice.

Conclusion

[15] The trial court did not abuse its discretion when it denied Schorey's motion to withdraw his guilty plea. We therefore affirm the trial court.

[16] Affirmed.

May, J., and Felix, J., concur.