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**IN THE
COURT OF APPEALS OF INDIANA**

MICHAEL L. JONES,)	
)	
Appellant-Defendant ,)	
)	
vs.)	No. 34A02-0705-CR-447
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE HOWARD SUPERIOR COURT II
The Honorable Stephen Jessup, Judge
Cause No. 34D02-0511-MR-00463

December 3, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Michael L. Jones (“Jones”) pleaded guilty in Howard Superior Court to Class B felony possession of methamphetamine with intent to deliver and Class B felony aggravated battery. He was ordered to serve an aggregate sentence of thirty years. Jones appeals and argues that the trial court abused its discretion when it denied his motion to withdraw guilty plea.

We affirm.

Facts and Procedural History

On July 26, 2005, Jones was charged in case number 34C01-0507-FA-00217 (“case 217”) with Class A felony dealing in methamphetamine, Class A felony dealing in a controlled substance, Class B felony dealing in a controlled substance, and Class A misdemeanor resisting law enforcement. Attorney Matthew Elkin (“Elkin”) appeared on behalf of Jones in this case.

On November 21, 2005, Jones was charged in case number 34D02-0511-MR-00463 (“case 463”) with Class A felony attempted murder, Class B felony aggravated battery, and Class C felony battery by means of a deadly weapon. Attorney Steve Raquet (“Raquet”) appeared on behalf of Jones in this case. Gary A. Cook (“Cook”) entered his appearance on behalf of Jones on January 10, 2007, when Raquet withdrew as a result of a conflict.

On May 4, 2006, Jones was charged in case number 34C01-0605-FA-00085 (“case 85”) with Class A felony dealing in methamphetamine and Class B felony unlawful possession of a firearm by a serious violent felon. Attorney Mark Dabrowski (“Dabrowski”) appeared on behalf of Jones in this case.

On January 12, 2007, the court received a recommendation of plea which stated that Jones would plead guilty under case 217 to a lesser-included Class B felony possession with intent to deliver methamphetamine and under case 463 to Class B felony aggravated battery. Under the terms of the plea agreement, Jones would receive fifteen years with ten years executed and five years suspended to probation in each case to be served consecutively. In exchange for this guilty plea, the State would dismiss case 85, dismiss all remaining charges under cases 217 and 463 and refrain from filing additional charges under the same facts.

At the guilty plea hearing on January 12, 2007, the court confirmed Jones's understanding of the agreement and discussed Jones's rights. Tr. pp. 3-4. Under oath, Jones confirmed that he understood his rights and that he was waiving those rights. He also confirmed the charges and the facts as outlined in the affidavits of probable cause. Tr. pp. 6-10. Jones testified that he had discussions with attorneys Elkin and Cook regarding this agreement and was advised of his rights, options and consequences of pleading guilty. Tr. pp. 11-12. Jones withdrew his plea of not guilty and entered a plea of guilty pursuant to the agreement. Tr. pp. 12-13. The court accepted his pleas of guilty and entered judgment on cases 217 and 463. Tr. p. 13. The court dismissed the other counts under cases 217 and 463. Id.

On February 7, 2007, the court, over the State's objection, granted Jones's motion to continue sentencing to February 28, 2007. On February 23, 2007, Jones filed his motion to withdraw guilty plea stating that upon further reflection he believed that it was in his best interests to withdraw his plea and proceed to trial. Appellant's App. p. 135.

The trial court set the motion for hearing on March 15, 2007, and vacated the February 28, 2007 sentencing.

On March 15, 2007, the court heard arguments and took the motion under advisement. On March 19, 2007, the court denied the motion and reset the sentencing hearing for March 28, 2007. On March 28, 2007, pursuant to the terms of the plea agreement, the court sentenced Jones to fifteen years with ten years executed and five years suspended to probation under case 217 and the same under case 436 to be served consecutively.

Standard of Review

The withdrawal of a guilty plea is governed by Indiana Code section 35-35-1-4 (2007). “[U]nless there is a manifest injustice shown, the decision to permit withdrawal is completely within the discretion of the court.” Centers v. State, 501 N.E.2d 415, 419 (Ind. 1986). Also, the trial court must deny a guilty plea withdrawal if the State has been “substantially prejudiced by reliance” on the plea. Ind. Code § 35-35-1-4(b) (2007). If neither of these situations applies then the court may allow a guilty plea withdrawal for any “fair and just reason.” 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.’” Brightman v. State, 758 N.E.2d 41, 44 (Ind. 2001). The moving party has the burden of establishing his grounds for relief by a preponderance of the evidence. See Ind. Code § 35-35-1-4(e).

Discussion and Decision

“[W]ithdrawal of the plea is necessary to correct a manifest injustice whenever:

- (1) the convicted person was denied the effective assistance of counsel;
- (2) the plea was not entered or ratified by the convicted person
- (3) the plea was not knowingly and voluntarily made;
- (4) the prosecuting attorney failed to abide by the terms of a plea agreement;
- or
- (5) the plea and judgment of conviction are void or voidable for any other reason.”

Indiana Code § 35-35-1-4(c).

Jones appears to go out of his way to avoid making an explicit ineffective assistance of counsel argument and fails to argue any of the above statutory reasons that would have required the trial court to grant a guilty plea withdrawal. Jones does claim that he did not receive a meaningful right to counsel prior to his plea of guilty because he did not have time to review the case with one of his attorneys before agreeing to plead guilty. Jones appears to argue the presence of “manifest injustice” which would require the trial court to accept his motion to withdraw his guilty plea as required under Indiana Code section 35-35-1-4 (2007).

During the hearing, the trial court questioned Jones to determine whether Jones freely and knowingly pleaded guilty. Jones indicated that he understood the proceedings and admitted that he committed Class B felony dealing in methamphetamine and Class B felony aggravated battery. Tr. pp. 6, 8-9. The court made Jones aware of the potential range of sentences and how his prior convictions could be used in making a sentencing determination. Tr. pp. 9-10. The court asked Jones, whether he had “discussed the matter of entering into this agreement and pleading guilty to these charges with”

attorneys Elkin and Cook. Tr. p. 10. He answered affirmatively as to both. Tr. p. 12. Jones noted that although he just met Cook, he still felt that his attorneys had answered his questions and provided him with the information he requested to his satisfaction. Tr. p. 12. Under these facts and circumstances, we conclude that Jones was fully advised of his rights and the consequences of pleading guilty and that he freely and knowingly pleaded guilty.

In the alternative, Jones argues that the change in one of his attorneys shortly before the guilty plea hearing is a fair and just reason to withdraw the plea and that the State is not substantially prejudiced. However, this plea agreement involved three different cases with four different attorneys over at least sixteen months, which denotes a rather high level of complexity and would require a good deal of negotiation and preparation. At the time of the plea, Jones was represented by Elkin and Cook who advised him to accept the plea. Cook stipulated to receiving the Jones file roughly a week before the guilty plea hearing. Tr. p. 31. After consulting with the other attorneys involved in the case, Cook advised Jones to accept the plea. Tr. p. 33. Jones had the benefit of two attorneys present at his guilty plea hearing and the counsel of at least three attorneys in making his decision to plead guilty. The change in attorney is not a fair and just reason under the facts and circumstances of this case.

Moreover, we observe that the State would be substantially prejudiced if Jones were allowed to withdraw his guilty plea under any case number. In this case, there were three separate cases in two different courts, encompassing nine different counts, comprised of eight felonies and one misdemeanor. The State dismissed case 85

completely and dismissed all but two counts under the other cases. The earliest of these cases dates back to July 26, 2005.

Under these facts and circumstances, we find that Jones freely and knowingly offered his guilty plea; and therefore, the trial court did not abuse its discretion in denying Jones's motion to withdraw guilty plea.

Affirmed.

NAJAM, J., and BRADFORD, J., concur.