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**IN THE
COURT OF APPEALS OF INDIANA**

JUAN CARLOS GARCIA,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 48A02-0705-CR-410

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0501-FB-1

November 28, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Juan Carlos Garcia appeals the denial of his motion to withdraw his guilty plea. We affirm.

Issue

Garcia raises one issue, which we restate as whether the trial court properly denied his motion to withdraw his guilty plea.

Facts

On January 2, 2005, Garcia was driving in Anderson and was stopped for a headlight violation. During the traffic stop, approximately one pound of marijuana, U.S. currency, and digital scales were found in the car. During the investigation, Garcia indicated there also were drugs located at his girlfriend's house. Police obtained and executed a search warrant. During the search, approximately three to four pounds of marijuana, one to two ounces of cocaine, digital scales, and over \$2,000 in U.S. currency were found at the house. After being Mirandized, Garcia implicated himself in the possession of cocaine and marijuana and indicated that he obtained the drugs for the sole purpose of distributing them.

On January 31, 2005, the State charged Garcia with Class B felony dealing in cocaine and Class D felony dealing in marijuana. On April 20, 2006, the charges were amended to one count of Class A felony dealing in cocaine and one count of Class D felony dealing in marijuana.

On February 12, 2007, Garcia pled guilty to the lesser included offense of Class B felony possession of cocaine with intent to deal and Class D felony possession of

marijuana with intent to deal. Pursuant to the guilty plea, Garcia's sentence was capped at ten years executed.

At the March 5, 2007 sentencing hearing Garcia orally moved to vacate his guilty plea. The trial court denied his motion and sentenced him to six years for the Class B felony and thirty months for the Class D felony. The trial court ordered that the sentences be served concurrently and "be executed on in-home detention." App. p. 8. Garcia now appeals.

Analysis

Garcia argues that the trial court improperly denied his motion to withdraw his guilty plea. Motions to withdraw guilty pleas are governed by Indiana Code Section 35-35-1-4. Where a defendant moves to withdraw a guilty plea prior to sentencing, Indiana Code Section 35-35-1-4(b) applies. This section provides:

After entry of a plea of guilty, or guilty but mentally ill at the time of the crime, but before imposition of sentence, the court may allow the defendant by motion to withdraw his plea of guilty, or guilty but mentally ill at the time of the crime, for any fair and just reason unless the state has been substantially prejudiced by reliance upon the defendant's plea. The motion to withdraw the plea of guilty or guilty but mentally ill at the time of the crime made under this subsection shall be in writing and verified. 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, or guilty but mentally ill at the time of the crime, whenever the defendant proves that withdrawal of the plea is necessary to correct a manifest injustice.

Ind. Code § 35-35-1-4(b).

Said another way:

The court is required to grant such a request only if the defendant proves that withdrawal of the plea “is necessary to correct a manifest injustice.” The court must deny a motion to withdraw a guilty plea if the withdrawal would result in substantial prejudice to the State. Except under these polar circumstances, disposition of the petition is at the discretion of the court.

Coomer v. State, 652 N.E.2d 60, 61-62 (Ind. 1995) (citations omitted).

As the parties acknowledge, Indiana Code Section 35-35-1-4(b) requires that a motion to withdraw a guilty plea be in writing. Garcia’s motion was made orally at the sentencing hearing. Because the motion was not made in writing or verified, this issue is waived. Flowers v. State, 528 N.E.2d 57, 59 (Ind. 1988) (“Because appellant’s motion to withdraw his guilty plea was not in writing or verified, he has waived the issue.”).

Waiver notwithstanding, Garcia’s claim fails. Garcia has not established that the withdraw of his plea is necessary to correct a manifest injustice. “Manifest injustice” is a necessarily imprecise standard, and an appellant seeking to overturn a trial court’s decision faces a high hurdle. Coomer, 652 N.E.2d at 62. Although a trial court’s ruling on a motion to withdraw a guilty plea is reviewed with a presumption in favor of the ruling, concerns about injustice carry greater weight when accompanied by credible evidence of involuntariness or when the circumstances of the plea reveal that the rights of the accused were violated. Id.

A court must confirm that a defendant acted freely and knowingly before accepting a guilty plea. Id. Factors we may consider include whether Garcia understand the allegations to which he was pleading guilty, whether he knew about the right to trial,

whether the decision to plead guilty was made with the benefit of counsel, whether he appreciated the sentencing ramifications of admitting guilt, and whether he understood the bargain struck with State. See id.

At the guilty plea hearing, Garcia was represented by counsel, who reiterated the terms of the plea agreement, and Garcia expressly agreed with the reiterated terms of the plea agreement. Garcia stated that he did not suffer from a mental or emotional disability and that he was not under the influence of alcohol or drugs. Garcia was informed of his constitutional rights and stated that he understood them and understood that he was waiving them by pleading guilty. Garcia was informed of the charges against him and the sentence he faced. The State laid a factual foundation for the charges to which Garcia was pleading guilty, and Garcia admitted to such.

At the sentencing hearing, Garcia testified in support of his motion to withdraw his guilty plea. Garcia stated that there were “a lot of inconsistencies in [his] paperwork.” Tr. pp. 73-74. He claimed that he never received a probable cause affidavit for the search warrant and that no probable cause hearing took place. He also asserted that he was not Mirandized during the traffic stop. Garcia stated that he wanted to withdraw his guilty plea to have his day in court and let a jury decide his case.

Upon review, we conclude that all of the necessary procedural safeguards were in place when Garcia pled guilty. These unsubstantiated claims challenging the basis for the search warrant and the timeliness of the Miranda warnings do not amount to a manifest injustice. The trial court was not required to grant Garcia’s motion to withdraw his guilty

plea. Further, Garcia has not established that the trial court abused its discretion in declining to grant his motion.

Conclusion

By failing to comply with the writing and verification requirements of Indiana Code Section 35-35-1-4(b), Garcia waived his challenge to the denial of his motion to withdraw his guilty plea. Waiver notwithstanding, he has not shown that he was subject to manifest injustice or that the trial court abused its discretion. We affirm.

Affirmed.

KIRSCH, J., and ROBB, J., concur.