NO. COA13-234
NORTH CAROLINA COURT OF APPEALS

Filed: 3 December 2013

STATE OF NORTH CAROLINA

v.	Iredell County
	Nos. 11 CRS 2689
TIMOTHY LEE RANKIN,	11 CRS 52119
Defendant.	12 CRS 54793

Appeal by defendant from judgments entered 8 October 2012 by Judge Joseph Crosswhite in Iredell County Superior Court. Heard in the Court of Appeals 29 October 2013.

Attorney General Roy Cooper, by Assistant Attorney General Donna B. Wojcik, for the State.

Amanda S. Zimmer for defendant-appellant.

GEER, Judge.

Defendant appeals from the trial court's denial of his motion to withdraw his *Alford* plea. We find no error.

On 27 September 2012, defendant appeared before the Honorable Mark E. Klass in the Iredell County Superior Court and entered an *Alford* plea to sale of marijuana, felony breaking and entering, and being a habitual felon. As part of the plea agreement, the State dismissed 13 other charges against

defendant. During the plea colloquy, defendant informed the court that he was on the medication Seroquel, but answered affirmatively when asked if he knew where he was and what he was doing. The court found a "factual basis for the entry of the plea" and noted for the record that defendant was "satisfied with his attorney," that he was "competent to stand trial," and that the "plea [was] his informed choice, made freely, voluntarily, and understandingly." The trial court accepted defendant's plea, but continued sentencing until 8 October 2012.

On 8 October 2012, defendant appeared with his attorney for sentencing before the Honorable Joseph Crosswhite. Defense counsel informed the court that defendant wished to withdraw his plea because there was a discrepancy in the evidence as to the quantity of marijuana for which he was being charged, and defendant believed that such an inconsistency was grounds for dismissal. Defense counsel also informed the court that defendant contended that his medication, which he was no longer taking, had affected his plea and that defendant was not satisfied with his counsel's legal services.

The trial court found defendant's first reason for withdrawal of his plea insufficient because as long as payment was made in exchange for the marijuana, the quantity of marijuana was irrelevant to the issue of defendant's guilt.

Defendant himself then addressed the court and asserted that he should be able to withdraw his plea because the medication he had been on during the 27 September 2012 hearing caused him to be "in a daze." Defendant claimed that he was "saying yes to stuff [he] didn't mean . . . [and he] really wasn't comprehending." In response to defendant's remarks, Judge Crosswhite reviewed the record and noted that Judge Klass had inquired about defendant's medication during the 27 September 2012 entry of the plea agreement.

The trial court denied defendant's motion to withdraw the plea, explaining:

> All the findings were found in this matter. [Defendant] was found to be competent at the time by Judge Klass. There is a factual basis for the plea. At that point the Defendant indicated he was satisfied with his lawyer's services. Judge Klass found that the Defendant was competent to stand trial and that the plea was his informed choice, made freely, voluntarily, and understandingly. As a result, the matter was continued to this date. At this point the Court will enter judgment in this matter pursuant to the previously-negotiated plea agreement.

The trial court then sentenced defendant to 101 to 131 months imprisonment for sale of marijuana as a habitual felon and a consecutive term of 12 to 24 months imprisonment for breaking and entering. Defendant timely appealed to this Court.

Defendant's sole argument on appeal is that the trial court erred in denying his motion to withdraw his plea. In reviewing a trial court's denial of a defendant's motion to withdraw a guilty plea, we must "determine, considering the reasons given by the defendant and any prejudice to the State, if it would be fair and just to allow the motion to withdraw." *State v. Marshburn*, 109 N.C. App. 105, 108, 425 S.E.2d 715, 718 (1993).

"'[W]here the defendant seeks to withdraw his guilty plea before sentence, he is generally accorded that right if he can show any fair and just reason.'" *State v. Handy*, 326 N.C. 532, 536, 391 S.E.2d 159, 161 (1990) (quoting *State v. Olish*, 164 W. Va. 712, 715, 266 S.E.2d 134, 136 (1980)). "While there is no absolute right to withdrawal of a guilty plea, withdrawal motions made prior to sentencing, and especially at a very early stage of the proceedings, should be granted with liberality." *Id.* at 537, 391 S.E.2d at 161–62 (internal citations omitted).

Our Supreme Court has laid out several factors that favor allowing withdrawal of a guilty plea, including:

> whether the defendant has asserted legal innocence, the strength of the State's proffer of evidence, the length of time between entry of the guilty plea and the desire to change it, and whether the accused has had competent counsel at all relevant times. Misunderstanding of the consequences of a guilty plea, hasty entry, confusion, and coercion are also factors for consideration.

Id. at 539, 391 S.E.2d at 163 (internal citation omitted). This list of factors is not exclusive, and none of these factors is alone determinative. *State v. Chery*, 203 N.C. App. 310, 313, 691 S.E.2d 40, 43 (2010).

On appeal, defendant claims that the following factors support the withdrawal of his plea agreement: (1) he was confused at the time of the plea; (2) he had a disagreement with his attorney and he was not satisfied with his legal counsel; (3) he did not admit his guilt; and (4) there was a short period of time between the entry of the plea and defendant's motion to withdraw. Defendant argues that, together with other circumstances, these factors support allowing the motion to withdraw. Based upon our review of the record, we cannot conclude that the trial court erred in determining that these reasons did not warrant allowing withdrawal of the plea.

First, on appeal, defendant contends that his belief that the discrepancy in the weight of the marijuana was "grounds for dismissal itself" shows confusion on his part regarding what the State needed to prove to convict him of sale of marijuana. However, for defendant's confusion to be relevant to our analysis, "defendant must show that the misunderstanding related to the *direct consequences* of his plea." *Marshburn*, 109 N.C. App. at 109, 425 S.E.2d at 718. Here, defendant has not shown

that his misunderstanding regarding the relevancy of the weight discrepancy was related to the direct consequences of his plea. Further, defendant indicated during the plea colloquy that he understood the nature of the charges and the elements of each charge.

Defendant also argues that he was confused at the 27 September 2012 entry of the plea because his medication caused him to be "in a daze." However, during the plea colloquy, defendant informed the court that he was on this medication, but indicated that he knew where he was and what he was doing. Further, the trial court, the State, and defendant's own counsel were satisfied that defendant was competent at the time the plea was entered.

Defendant relies on *State v. Deal*, 99 N.C. App. 456, 393 S.E.2d 317 (1990), as support for his argument that medication can be considered when determining if a defendant was confused at the time of a plea. In *Deal*, this Court acknowledged the fact that the defendant was on medication at the time of his plea, *id.* at 459, 393 S.E.2d at 318, but the medication was not a dispositive factor in that case. *Id.* at 464, 393 S.E.2d at 321. Rather, this Court noted that the defendant was 19 years old at the time of his plea, had dropped out of school at the eighth grade, was diagnosed as learning disabled, and could only

read and spell at a second grade level. *Id.* at 458, 393 S.E.2d at 318. The defendant's attorney also told the trial court that his client "'did not understand a lot of things.'" *Id.* at 459, 393 S.E.2d at 318. This Court held that "in light of defendant's low intellectual abilities, there is sufficient credible evidence that he was laboring under a basic misunderstanding of the guilty plea process. We therefore find that his plea of guilty was not the result of an informed choice." *Id.* at 464, 393 S.E.2d at 321. Consequently, the Court concluded that "this misunderstanding constitutes a fair and just reason to permit him to withdraw his plea." *Id.* at 461, 393 S.E.2d at 319.

Here, unlike in *Deal*, there is no evidence that defendant is intellectually challenged. In fact, in the plea transcript entered on 27 September 2012, defendant indicated that he has a GED. Further, defendant was 45 years old at the time he entered into the plea, unlike the 19-year-old defendant in *Deal*. In addition, here, defendant's own attorney believed defendant to be competent. Defendant's attorney told the court that they "had an intelligent conversation prior to [the plea], after [the plea], and then frankly even today my client and I have had a conversation . . . [and] I think even as we speak today that my client is competent and knows what he's doing." Therefore,

although we consider the fact that defendant was on medication at the time of his plea, this factor is not dispositive as there is no evidence that defendant was confused as to the process or consequences of the plea at the time of its entry. *See Marshburn*, 109 N.C. App. at 109, 425 S.E.2d at 718; *Deal*, 99 N.C. App. at 464, 393 S.E.2d at 321.

Second, defendant contends that he and his lawyer disagreed about the handling of the case. However, during the plea colloquy on 27 September 2012, defendant had indicated that he was satisfied with his counsel's legal services. Defendant did not take issue with the competency of his legal counsel on the date he entered into the plea, but rather waited until the date of sentencing, 11 days later. Therefore, although defendant and his attorney had a disagreement, there is no indication in the record that defendant was not competently represented at the time his plea was entered.

Third, defendant contends that because his plea was an *Alford* plea, he did not admit his guilt, and therefore this is a factor that supports his motion to withdraw. This Court has explained that "[a] defendant enters into an *Alford* plea when he proclaims he is innocent, but 'intelligently concludes that his interests require entry of a guilty plea and the record before the judge contains strong evidence of actual guilt.'" *Chery*,

203 N.C. App. at 314, 691 S.E.2d at 44 (quoting *N.C. v. Alford*, 400 U.S. 25, 37, 27 L. Ed. 2d 162, 171, 91 S. Ct. 160, 167 (1970)). The fact that defendant "seeks to withdraw . . . an *Alford* plea does not conclusively establish the factor of assertion of legal innocence for purposes of" determining whether to allow a motion to withdraw a plea. *Id.* at 315, 691 S.E.2d at 44. Further, defendant did in fact admit his guilt with regard to the breaking and entering charge when, during his statement to the police, he said that he was at the residence to purchase marijuana and, since nobody was home, he went in to get it himself.

Finally, defendant points to what he describes as the short period of time between the entry of his plea and his motion to withdraw. The length of time between the entry of the plea and the motion to withdraw is not dispositive and must be viewed along with the other factors. *See Handy*, 326 N.C. at 540, 391 S.E.2d at 163. Here, we cannot conclude that a motion to withdraw made 11 days after the plea was entered is sufficient to require the judge to allow withdrawal of the plea in the absence of any other compelling factors, which we do not believe exist. *Compare State v. Davis*, 150 N.C. App. 205, 206, 562 S.E.2d 590, 592 (2002) (affirming the denial of the defendant's motion to withdraw his plea made seven days after its entry)

with Handy, 326 N.C. at 540, 391 S.E.2d at 163 (holding that the defendant's motion to withdraw his guilty plea less than 24 hours after its entry was "prompt and timely" and "should have been allowed if he proffered any fair and just reason for the motion").

Based upon our review of the record, we conclude that defendant has failed to show a fair and just reason for withdrawal of his *Alford* plea. Therefore, the trial court properly denied defendant's motion to withdraw his plea.

No Error.

Judges ERVIN and DILLON concur.

Report per Rule 30(e).