IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-73

Filed: 17 November 2015

Wake County, No. 13CRS211138-39

STATE OF NORTH CAROLINA,

v.

REGINA NATASHA ROSS, Defendant.

Appeal by defendant from judgment entered on or about 25 August 2014 by Judge James E. Hardin, Jr. in Superior Court, Wake County. Heard in the Court of Appeals 13 August 2015.

Attorney General Roy A. Cooper, III, by Special Deputy Attorney General Anne J. Brown, for the State.

Michelle FormyDuval Lynch, for defendant-appellant.

STROUD, Judge.

Defendant appeals judgment entered upon her guilty plea. Defendant argues the trial court should have allowed her motion to withdraw her plea. For the following reasons, we affirm.

On or about 30 June 2014, defendant pled guilty to two counts of felonious restraint. The trial court deferred judgment until 25 August 2014. On 25 August 2014, defendant made an oral motion to withdraw her guilty plea which was denied.

Thereafter, the trial court sentenced defendant upon her guilty plea to 30 months of supervised probation. Defendant appeals.

Defendant argues that "the trial court erred in failing to grant . . . [her] motion to withdraw her guilty plea before she was sentenced." (Original in all caps.) When considering whether the trial court should have allowed defendant a presentencing withdrawal of her plea we make an "independent review of the record[.]" *State v. Handy*, 326 N.C. 532, 539, 391 S.E.2d 159, 163 (1990). In *State v. Meyer,* the Supreme Court summarized and clarified the factors the trial court should consider when determining whether a presentence motion to withdraw should be allowed:

> In *State v. Handy*, 326 N.C. 532, 391 S.E.2d 159 (1990), this Court held that a presentence motion to withdraw a plea of guilty should be allowed for any fair and just reason. Although there is no absolute right to withdraw a guilty plea, withdrawal motions made prior to sentencing, and especially at a very early stage of the proceedings, should be granted with liberality. After a thorough review of case law from other jurisdictions, this Court listed several factors which favor the granting of a presentence motion to withdraw guilty pleas.
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> > Some of the factors which favor withdrawal include whether the defendant has asserted his 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.
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> After a defendant has come forward with a fair and just

reason in support of his motion to withdraw, the State may refute the movant's showing by evidence of concrete prejudice to its case by reason of the withdrawal of the plea.

. . . .

Although a change of circumstances might, under the facts of a given case, constitute a fair and just reason for allowing the withdrawal of a guilty plea prior to sentencing, a change of circumstances does not in itself mandate that such a motion be granted. Instead, a court must look to the facts of each case to determine whether a defendant has come forward with a fair and just reason to allow withdrawal of his guilty pleas.

Turning then to the facts of this case, we find none of the factors favoring withdrawal outlined in *Handy* to be present. *Perhaps most importantly, defendant in this case, unlike the defendant in Handy, has not asserted his legal innocence.* In *Handy*, the defendant pleaded guilty to felony murder based on the underlying charge of armed robbery. The following morning, the defendant told the trial judge that he had felt under pressure to plead guilty, and that after praying about it overnight and talking with his mother and attorneys, he believed he was not actually guilty of first-degree murder. In this case, defendant sought to withdraw his guilty pleas not because he believed he was innocent of the crimes charged, but because of the extensive media coverage generated by his escape.

Consideration of the other factors cited in *Handy* do not help defendant. The State's case is exceptionally strong. There is no evidence, and defendant does not argue, that he did not have competent counsel, that he misunderstood the consequences of his guilty plea, that his plea was entered in haste or that he was confused or coerced at the time he pleaded guilty. And finally, defendant's motion to withdraw his guilty pleas came more than three and one-half months after he pleaded guilty and after his first sentencing proceeding was cut short by his escape.

. . . .

Based on the facts of this case, we hold that defendant has not proffered a fair and just reason why he

> should be permitted to withdraw his guilty pleas; therefore, the trial judge did not err by denying defendant's motion.

330 N.C. 738, 742-45, 412 S.E.2d 339, 342-43 (1992) (emphasis added) (citations, quotation marks, and footnotes omitted).

Defendant argues that six factors support her request to withdraw her guilty plea. Defendant claimed that in June when she entered her plea, (1) she did so hastily because she needed to report to work in another state the next day and (2) she feared losing her job. In August when she requested to withdraw her plea, she claimed that (3) her children's father told her "she was giving up by not going to trial[;]" (4) she could not afford a "transfer fee that would be imposed upon a probationary sentence transferred to Florida[;]" (5) she felt "pressured into taking the plea" due to her job and her "life situation[;]" and (6) she now had time off from work to go to trial without losing her job.

"[M]ost importantly," defendant "has not asserted . . . legal innocence." *Id.* at 744, 412 S.E.2d at 343. Furthermore, "the State's proffer of evidence" is very strong. Defendant was not the legal guardian of two of her children. Law enforcement found defendant in a hotel room with her children after she had told the children's father she was taking the children out of state and he was never going to see them again; defendant had prior legal issues regarding this behavior. Defendant's own presentation of the factors tends to show that she did not desire to change her guilty plea until the very day of sentencing. For approximately two months after entry of

the plea, defendant gave no indication that she desired to withdraw her plea. Defendant has not made any arguments regarding the competency of her counsel or that she misunderstood the consequences of the guilty plea. The only potentially relevant factor defendant asserts is haste and feeling that she was coerced by circumstances in her "job" and "life." Defendant does not argue that her counsel or the trial court failed to take the time to adequately address her plea. In addition, the delayed timing of her motion to withdraw indicates her plea was not made in haste as she did not change her mind for approximately two months. *See generally Handy*, 326 N.C. at 539, 391 S.E.2d at 163 ("A swift change of heart is itself strong indication that the plea was entered in haste and confusion; furthermore, withdrawal shortly after the event will rarely prejudice the Government's legitimate interests. By contrast, if the defendant has long delayed his withdrawal motion, and has had the full benefit of competent counsel at all times, the reasons given to support withdrawal must have considerably more force." (citation omitted)). Quite simply, defendant changed her mind, and therefore "has not proffered a fair and just reason why [s]he should be permitted to withdraw [her] guilty pleas; therefore, the trial judge did not err by denying defendant's motion." *Meyer*, 330 N.C. at 745, 412 S.E.2d 339, 343. Thus, we affirm.

AFFIRMED.

Judges McCULLOUGH and INMAN concur.

Report per Rule 30(e).