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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-228

Filed: 15 November 2016

Wayne County, No. 13 CRS 50278

STATE OF NORTH CAROLINA

v.

KYLE LAMAR CARLISLE

Appeal by defendant from judgment entered 10 July 2015 by Judge Arnold Jones in Wayne County Superior Court. Heard in the Court of Appeals 24 August 2016.

*Attorney General Roy Cooper, by Assistant Attorney General Kristin J. Uicker, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender David W. Andrews, for defendant-appellant.*

CALABRIA, Judge.

Kyle Lamar Carlisle (“defendant”) appeals from the trial court’s judgment entered upon his guilty plea subject to several conditions regarding providing assistance to the State. Defendant never provided meaningful assistance. The State prayed judgment and the trial court denied defendant’s motion to withdraw a guilty plea. We conclude that the trial court properly denied defendant’s motion to withdraw his plea.

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On 14 January 2013, defendant was arrested for trafficking in cocaine, maintaining a vehicle for keeping or selling controlled substances, and driving while license revoked. On 16 May 2013 defendant was again arrested for possession of a firearm by a felon. On 9 September 2013 the Wayne County Grand Jury indicted defendant for possession of a firearm by a felon. The possession of a firearm by a felon offense was heard on 20 May 2014. The following day, the trial court released the jury and announced that the possession of a firearm by a felon offense had been dismissed.

Defendant pled guilty pursuant to a plea agreement (the “agreement”) to the trafficking offense and agreed to provide assistance to law enforcement in a drug trafficking case. At the plea hearing, defendant stated that he understood the nature of the trafficking offense, that he was satisfied with his attorney, and that he was in fact guilty. The trial court asked defendant if he agreed to plead guilty as part of an agreement, if he was informed of the terms and conditions of the plea, and if he had an opportunity to speak with his attorney about the agreement. Defendant answered the trial court in the affirmative to each question. The trial court did not enter judgment on 21 May 2014, but set a review date for 3 December 2014.

The addendum to the agreement (the “addendum”) consisted of five clauses on two pages, and was signed by defendant, defense counsel, the prosecutor, and the trial court. The first clause of the addendum stated that defendant would have six

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months to provide information leading to an arrest involving a “first-level trafficking offense[.]” If defendant was cooperative, but unable to provide information for such an arrest, he would be given six additional months to provide information. The second clause stated that if defendant provided assistance that led to an arrest for first-level trafficking, he would receive a sentence of 6-17 months and the offenses of possession of a firearm by a felon, maintaining a vehicle for keeping or selling controlled substance, and driving while license revoked would be dismissed. The third and fourth clauses of the addendum focused on the type of sentencing defendant would receive depending upon the level of information provided. The fifth clause stated that defendant would breach the agreement if he failed to cooperate with law enforcement, and could be prosecuted for each of the offenses.

On 19 September 2014, defendant’s counsel, David Webster, filed a motion to withdraw as counsel. On 6 January 2015 the trial court granted the motion to withdraw. On 5 May 2015, the trial court appointed a new attorney, Gene Britt, to represent defendant. The new attorney filed a motion to withdraw defendant’s guilty plea on 5 June 2015. The motion was heard before the court on 10 July 2015.

At the hearing, the prosecutor stated that although defendant called a detective after he pled guilty, he failed to provide specific information about drug activity according to the agreement. In response, Mr. Britt asserted that defendant would make a concrete assertion of his innocence, and that his plea had been entered

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in haste. Defendant explained that he was not told all the details in the agreement, and that he did not sign the agreement until he went to court for the plea hearing. He also said that if he had understood the agreement, he would have never signed the agreement at all. The State argued that defendant did not enter a hasty plea and that his signature on the agreement indicated he understood it. The trial court denied defendant's motion and sentenced defendant to a minimum of 35 to a maximum of 51 months in the North Carolina Department of Adult Correction. Defendant appeals.

On appeal, defendant contends the trial court failed to identify and apply the proper standard to his motion to withdraw a guilty plea. We disagree.

We review a trial court's denial of a motion to withdraw a guilty plea based on our independent review of the record. *See State v. Handy*, 326 N.C. 532, 539, 391 S.E.2d 159, 163 (1990). A presentence motion to withdraw a guilty plea should be allowed for any fair and just reason. *Id.* at 539, 391 S.E.2d at 162. Additionally, withdrawal motions made prior to sentencing, especially at an early stage of the proceedings, should be granted with liberality. *Id.* at 537, 391 S.E.2d at 162.

Defendant contends that he provided fair and just reasons to withdraw his guilty plea in accordance with the holding of our Supreme Court in *State v. Handy*. In *Handy*, the Court held that if a motion to withdraw was filed prior to sentencing it is subject to the fair and just reason standard. *Id.* at 539, 391 S.E.2d at 162. The

court considers whether a defendant has met such a standard based upon the length of time between the entry of the guilty plea and the desire to withdraw it, whether the accused had competent counsel at all times, whether the defendant asserted his legal innocence, and the strength of the State's proffer of evidence. *Id.* at 539, 391 S.E.2d at 163. Furthermore, misunderstanding of the consequences of a guilty plea, hasty entry, confusion, and coercion are also factors for consideration. *Id.*

In the instant case, the first factor the trial court considered was the length of time between defendant's initial plea and the subsequent motion to withdraw. If a 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." *Id.* at 539, 291 S.E.2d at 163 (citation omitted). The record shows that on 21 May 2014, defendant entered a guilty plea. Subsequently, defendant filed a motion to withdraw over a year later on 16 June 2015. The long delay does not support defendant's motion to withdraw.

The second factor in analyzing a motion to withdraw is whether defendant possessed competent counsel at all times. Defendant was appointed Carroll Turner as his counsel on 14 January 2013. Subsequently, defendant retained Mr. Webster as counsel in November 2013, then Mr. Turner withdrew as appointed counsel. Mr. Webster helped defendant with the agreement, then withdrew as counsel on 6 January 2015. The trial court then appointed Mr. Britt, who filed defendant's motion

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to withdraw the plea. The State argues that defendant had competent counsel at all times. From the record, it appears that defendant did have competent counsel available at all times, which does not support his motion to withdraw.

The assertion of legal innocence is another factor to consider when reviewing a defendant's motion to withdraw a guilty plea. This court may consider whether a defendant's assertion of legal innocence is supported by facts or law in determining whether this factor weighs in favor or against a defendant's motion to withdraw. *See State v. Hatley*, 185 N.C. App. 93, 100, 648 S.E.2d 222, 227 (2007). Defendant stated that he maintains a concrete assertion of innocence of all charges. Additionally, defendant submitted to the court "everybody that I've spoken to I've also told them that I was innocent not only factually, but legally due to errors in my search warrant."

Notwithstanding his submission, defendant's assertion of innocence is inconsistent with his words and actions leading up to this motion. Defendant admitted that the cocaine found in his car was his and that it was not unusual for him to purchase nine ounces of cocaine at a time. Additionally, defendant agreed to help officers with future drug investigations. These are all examples of defendant's admission of guilt without providing any factual or legal support for his assertion of innocence.

The strength of the State's proffered evidence is another factor the court considers regarding a defendant's motion to withdraw. A strong, uncontested proffer

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of evidence weighs against allowing the defendant to withdraw his plea. *State v. Chery*, 203 N.C. App. 310, 315-16, 691 S.E.2d 40, 45 (2010). Additionally, a proffer of evidence which includes a defendant's extensive factual admissions to law enforcement is strong evidence showing the defendant's responsibility for the crime to which he pled guilty. *State v. Villatoro*, 193 N.C. App. 65, 70, 666 S.E.2d 838, 842 (2008). The State argues that its evidence against defendant is strong. Defendant admitted that he was carrying over 40 grams of cocaine in his vehicle and that he regularly purchased large amounts of cocaine from the same supplier. Therefore, defendant's admission of guilt, his routine nature of purchasing cocaine, and interaction with law enforcement cultivate a strong proffer of evidence, which weighs against his motion to withdraw.

Additional factors the court weighs in consideration of a motion to withdraw a guilty plea include: misunderstanding, haste, confusion and coercion. Defendant contends that although his attorney reviewed the agreement with him, he would never have signed the plea at all if he had known the facts of the agreement. Defendant further contends that he was confused and misunderstood the agreement. In support of this argument, defendant asserts that the trial court, when accepting his plea, failed to review the terms of the agreement with him. Additionally, defendant's brief points to ambiguous language in the agreement, long clauses, and a misrepresented description of "trafficking."

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Notwithstanding defendant's contention, it is apparent that he understood the requirements of the agreement and that he confirmed this knowledge with the trial court. Additionally, the record demonstrates that defendant understood the maximum sentence which could be imposed if he did not comply with the agreement. Further, defendant never raised any issues between the time he initially made the agreement and when he was appointed a new attorney. The lack of evidence showing any concrete examples of misunderstanding, haste, confusion or coercion does not support his motion to withdraw.

If a defendant presents fair and just reasons for withdrawing his plea, the State may refute the defendant's reasons with evidence of "concrete prejudice" to its case that would result from withdrawal of the plea. *Handy*, 326 N.C. at 539, 391 S.E.2d at 163. Substantial prejudice may come in the form of the destruction of important physical evidence, the death of an important witness, and the lengthy trial of other defendants with whom the defendant could have been joined for trial. *State v. Marshburn*, 109 N.C. App. 105, 108, 425 S.E.2d 715, 718 (1993). Defendant did not show a fair and just reason for withdrawal, thus allowing the State to proceed without having to show if the State would be concretely prejudiced.

The trial court concluded: (1) defendant had the benefit of competent counsel at all times, (2) the present case can be distinguished from *State v. Handy* because defendant's plea was not entered into in haste, but was deliberated, and (3) defendant



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was not allowed to withdraw his prior acceptance of the agreement. In compliance with the legal standard provided by *Handy*, which requires a defendant to provide a fair and just reason to withdraw a plea prior to sentencing, the trial court applied and correctly considered the *Handy* factors. Therefore, the trial court did not err in applying the correct legal standard.

We hold that in consideration of the *Handy* factors, defendant's motion to withdraw was properly denied. Furthermore, we hold that the trial court did not err in applying the *Handy* factors and denying defendant's motion to withdraw. The trial court's order is affirmed.

AFFIRMED.

Judges DAVIS and TYSON concur.

Report per Rule 30(e).