IN THE UTAH COURT OF APPEALS

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State of Utah, Plaintiff and Appellee, v. Anthony Gallegos, Defendant and Appellant.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20060676-CA F I L E D (June 26, 2008) 2008 UT App 241

Second District, Ogden Department, 061901112
The Honorable Michael D. Lyon

Attorneys: Randall W. Richards, Ogden, for Appellant
Mark L. Shurtleff and Ryan D. Tenney, Salt Lake City, for Appellee

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Before Judges Greenwood, Thorne, and Bench.

GREENWOOD, Presiding Judge:

Defendant pleaded guilty to attempted possession of a controlled substance, a class A misdemeanor, and aggravated assault, a third degree felony. Prior to sentencing, Defendant filed a motion to withdraw his guilty plea. The trial court denied Defendant's motion and this appeal followed. We affirm.

An appeal challenging the denial of a motion to withdraw a guilty plea involves various standards of review. First, we review the trial court's ruling on a motion to withdraw a guilty plea for abuse of discretion. See State v. Beckstead, 2006 UT 42, ¶ 7, 140 P.3d 1288. Second, we review the trial court's "findings of fact made in connection with a ruling on the motion to withdraw a guilty plea" for clear error. Id. And finally, we review "the ultimate question of whether the [trial] court strictly complied with constitutional and procedural requirements for entry of a guilty plea [as] a question of law . . . for correctness." Id. ¶ 8 (internal quotation marks omitted).

The threshold requirement for a valid guilty plea is that the defendant entered into it knowingly and voluntarily. See id. ¶ 10. Rule 11 of the Utah Rules of Criminal Procedure not only requires that the defendant enter the plea knowingly and voluntarily, but also outlines certain questions judges should

ask when determining the nature of the plea. See Utah R. Crim. P. 11; Beckstead, 2006 UT 42, ¶ 10. After engaging in what is commonly referred to as a rule 11 colloquy, the trial court "must then receive from the defendant an affirmation that he committed the offense to which he is pleading guilty, that he knows of and understands the rights he is surrendering, and that his plea is voluntary." Id.

In this case, Defendant asserts that because he told the trial court, during the rule 11 colloquy, that he had taken Thorazine, the court had an obligation to "inquire further into . . . Defendant's mental condition" and that because it failed to do so, the trial court abused its discretion by denying Defendant's motion to withdraw.

In support of his position, Defendant primarily relies on State v. Beckstead, 2006 UT 42, 140 P.3d 1288.[1] In Beckstead, the Utah Supreme Court analyzed the extent of a trial court's "duty to explore the effects of alcohol consumption on a defendant's ability to enter a knowing and voluntary guilty plea." Id. ¶ 6. In doing so, the court refused to impose a specific line of questioning that the trial court is required to follow:

> While . . . [r]ule 11 counsels a [trial] court to make further inquiry into a defendant's competence to enter a guilty plea once the court has been informed that the defendant has recently ingested . . . substances capable of impairing his ability to make a knowing and intelligent waiver of his constitutional rights, we do not believe that such an inquiry must follow a specific line of questioning . . . .

Id. ¶ 16 (second and fourth alterations in original) (citation and internal quotation marks omitted). While not requiring a specific script, the supreme court explained that upon learning that the defendant has ingested a substance that may impair his ability to enter a knowing and voluntary plea, the trial court is required to enter into a "meaningful engagement" with the defendant. Id. ¶ 18. Otherwise, the trial court "may well find itself unable to assemble sufficient facts upon which to make a judgment about a defendant's ability to enter a plea that would

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1. Defendant relies on a few other cases that predate Beckstead. However, because Beckstead and Oliver v. State, 2006 UT 60, 147 P.3d 410, are the Utah Supreme Court's most recent cases on this issue, and they are particularly on point, we analyze this case under these decisions alone.

survive appellate review." Id. "'The critical question [in this exchange] is whether the drugs--if they have a capacity to impair the defendant's ability to plea--have in fact done so on this occasion.'" Oliver v. State, 2006 UT 60, ¶ 11, 147 P.3d 410 (quoting United States v. Savinon-Acosta, 232 F.3d 265, 268 (1st Cir. 2000)).

Contrary to Defendant's assertion, the trial court is not required to engage in a dialogue with the defendant about the particular substance allegedly ingested. Rather,

> [t]he court can make this determination most effectively by interacting with the defendant himself, by asking him questions concerning his mental state and ability to understand the procedures, and then weighing both the content of the responses offered as well as the demeanor and general coherence of the defendant that can be gleaned from his responses.

Id. Importantly, the supreme court explained that "it may be beneficial for the court to ask specifically about the type and amount of drug consumed," but it is within the "court's sound discretion to determine whether to pursue that line of inquiry." Id.

In this instance, Defendant informed the trial court at the plea hearing that he was on Thorazine. The court then asked Defendant, "What is [Thorazine]?" In response, Defendant failed to indicate the drug's purpose and stated only that he did not like it. The trial court followed up with the question of whether Thorazine had in any way clouded Defendant's judgment. When Defendant said that the medication had not clouded his judgment, the trial court continued, asking Defendant, "So your mind is clear today and you understand what you're doing?" Defendant responded affirmatively.

"While the defendant's own assurances of his capacity are not conclusive, [c]ourts have commonly relied on the defendant's own assurance . . . that the defendant's mind is clear." Id. ¶ 13 (first alteration in original) (internal quotation marks omitted). Further, as Defendant points out, before accepting Defendant's guilty plea, the trial court "went through a complete rule 11 colloquy," during which it had sufficient time to observe Defendant's behavior. Based on the trial court's inquiry regarding Defendant's state of mind, its thorough rule 11 colloquy, and its advantaged position to observe Defendant's behavior, it is apparent that the trial court engaged in a meaningful exchange with Defendant to determine whether Defendant's ability to plea was impaired.

At the hearing on Defendant's motion to withdraw his guilty plea, the trial court reviewed a video of the plea proceeding. It then denied Defendant's motion, stating:

> I went through a very careful colloquy with you, and I am persuaded and so find right now that your plea was knowing and voluntary. You were not under the influence of drugs or medication or anything else. You understood very well, and in fact, when we started, I think you were with [a different attorney], this court adjourned that proceeding. You went back out and had a further visit with him and came back, and the court finished that colloquy with you. And I went through each of the required questions that I'm required to by law. And you gave me satisfactory answer[s].

Defendant offered no evidence that he actually was on Thorazine or the dosage. He also failed to present any evidence about the effects of Thorazine. Further, the trial court had the benefit of observing Defendant's behavior at the plea hearing and comparing those observations with Defendant's behavior at the hearing on the motion to withdraw, where Defendant claimed he was no longer taking Thorazine. Cf. State v. Beckstead, 2006 UT 42, ¶ 21, 140 P.3d 1288 (remarking on the trial court's ability to compare the defendant's behavior at various proceedings). We therefore conclude that the trial court acted within its discretion in denying Defendant's motion to withdraw the plea. Consequently, we affirm.

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Pamela T. Greenwood,
Presiding Judge

WE CONCUR:

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William A. Thorne Jr.,
Associate Presiding Judge

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Russell W. Bench, Judge