

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication
Plaintiff and Appellee,)	
)	Case No. 20040833-CA
v.)	
)	
George Isaac Hernandez,)	F I L E D
)	September 29, 2005
)	
Defendant and Appellant.)	2005 UT App 414

Third District, Salt Lake Department, 031904553
The Honorable Robin W. Reese

Attorneys: Margaret P. Lindsay, Orem, and Patrick V. Lindsay,
 Provo, for Appellant
 David E. Yocum and Jon D. Shuman, Salt Lake City, for
 Appellee

Before Judges Billings, McHugh, and Orme.

PER CURIAM:

George Isaac Hernandez appeals the district court's denial of his motion to withdraw his guilty plea. We affirm.

A plea of guilty "may be withdrawn only upon leave of the court and a showing that it was not knowingly and voluntarily made." Utah Code Ann. § 77-13-6(2)(a) (Supp. 2005). We review a trial court's denial of a motion to withdraw a guilty plea for abuse of discretion. See State v. Benvenuto, 1999 UT 60, ¶10, 983 P.2d 556. However, "the ultimate question of whether the trial court strictly complied with constitutional and procedural requirements for entry of a guilty plea is a question of law that is reviewed for correctness." Id. (quotations and citations omitted).

Hernandez claims that his plea was not knowing and voluntary because, at the time he entered his plea, he was not taking certain necessary medications. Hernandez also argues that he did not fully understand the surrounding proceedings because he was unable to review copies of police reports.

"It is well established that 'strict compliance with [Utah Rule of Criminal Procedure 11(e)] creates a presumption that the plea was voluntarily entered.'" State v. Martinez, 2001 UT 12, ¶22, 26 P.3d 203 (quoting State v. Gamblin, 2000 UT 44, ¶11, 1 P.3d 1108). "While we describe the court's duty as one of 'strict' compliance, the strict compliance requirement 'does not mandate a particular script or rote recitation of the rights listed.'" Id. (quoting State v. Visser, 2000 UT 88, ¶11, 22 P.3d 1242). "The purpose of rule 11 is to ensure that a defendant knows of his or her rights and thereby understands the consequences of a decision to plead guilty." Id.

Here, the trial court strictly complied with rule 11(e). Hernandez was informed of and acknowledged that he understood his rights. Hernandez was represented by counsel. With counsel present, the court informed Hernandez of, and Hernandez acknowledged that he understood: (1) the possible penalties for simple assault; (2) the rights in regard to a speedy trial before a jury, including the right to testify or remain silent, the right to the presumption of innocence, and the right to call witnesses and cross-examine the State's witnesses; and (3) the right to an appeal. Hernandez acknowledged that he understood that by pleading guilty he was waiving these rights, and that he had discussed the waiver of such rights with counsel. Hernandez also acknowledged that he had reviewed the rights set forth on his written waiver form with counsel. In addition, Hernandez admitted at the hearing that he understood both the nature of his offense and the consequences of pleading guilty. His written waiver form and guilty plea indicates the same. Thus, the trial court satisfied the requirements of rule 11, and Hernandez, both in colloquy with the court and by his written statement, clearly acknowledged that he possessed sufficient understanding of the elements of the crime in relation to the facts. See State v. Martinez, 2001 UT 12 at ¶25 (holding that, where rights were described and understood pursuant to colloquy and written affidavit, rule 11 requirements were satisfied).

Because the plea colloquy under rule 11 was complete, the presumption is that the plea was voluntary. See State v. Humphrey, 2003 UT App 233, ¶10, 79 P.3d 960. Hernandez offers no evidence to rebut this conclusion. On the contrary, Hernandez offers only speculation and fails to provide "substantial evidence to rebut the conclusion that his plea was voluntary." State v. Benvenuto, 1999 UT 60, ¶22, 983 P.2d 556. As the trial court noted at the hearing on the motion to withdraw the plea,

[T]here's been no medical evidence offered at all other than your own testimony that because of the lack [of] these medications that you weren't understanding well. . . .

There's been no doctor to testify that he prescribed those medications. There's been no doctor or anyone else [to] testify as to the medical effect if you failed to take those medications.

Hernandez's argument that his plea was involuntary because he did not receive the police reports in this case similarly fails. Nothing in the record indicates what the police reports contain and Hernandez provides no support for the argument that he would have changed his plea had he read the police reports in this case.

Thus, the court did not abuse its discretion in denying Hernandez's motion to withdraw his guilty plea. Moreover, the district court strictly complied with the constitutional and procedural requirements for entry of Hernandez's guilty plea. Accordingly, the district court's denial of Hernandez's motion to withdraw his guilty plea is affirmed.

Judith M. Billings,
Presiding Judge

Carolyn B. McHugh, Judge

Gregory K. Orme, Judge