

IN THE UTAH COURT OF APPEALS

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|--------------------------|---|--|----------------|
| State of Utah,           | ) | MEMORANDUM DECISION  |                |
|                          | ) | (Not For Official Publication)                             |                |
| Plaintiff and Appellee,  | ) |  |                |
|                          | ) | Case No. 20040978-CA                                       |                |
| v.                       | ) |  |                |
|                          | ) | F I L E D  |                |
| Bradley Arvil James,     | ) | (February 16, 2006)  |                |
|                          | ) |  |                |
| Defendant and Appellant. | ) | <table border="1"><tr><td>2006 UT App 53</td></tr></table> | 2006 UT App 53 |
| 2006 UT App 53           |   |  |                |

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Second District, Ogden Department, 031902122  
The Honorable Ernie W. Jones

Attorneys: Nathan N. Jardine, Salt Lake City, for Appellant  
Mark L. Shurtleff and Joanne C. Slotnik, Salt Lake  
City, for Appellee

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Before Judges Bench, Billings, and Thorne.

PER CURIAM:

Bradley Arvil James appeals the trial court's denial of his motion to withdraw his guilty plea. We affirm.

A guilty plea "may be withdrawn only upon leave of the court and a showing that it was not knowingly and voluntarily made."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).

James claims that his plea was not knowing and voluntary because, at the time he entered his plea, his attorney informed him that if he did not plead guilty he would be "overzealously prosecuted." James also argues that the trial court should have afforded him an evidentiary hearing to further explore whether his plea was in fact voluntarily entered.

"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, James acknowledges that the trial court satisfied the requirements of rule 11.<sup>1</sup> Because the plea colloquy under rule 11 was complete, the presumption is that the plea was voluntary. See State v. Humphrey, 2003 UT App 333, ¶10, 79 P.3d 960. James offers no evidence to rebut this presumption. For a plea to be voluntarily and knowingly made, a "defendant must understand the nature and value of any promise made to him." State v. Copeland, 765 P.2d 1266, 1274 (Utah 1988). James alleges only that he was informed he would be "overzealously prosecuted" if he did not enter a plea. This does not equate to "substantial evidence to rebut the conclusion that his plea was voluntary." Benvenuto, 1999 UT 60 at ¶22. Moreover, this allegation did not require the trial court to hold a separate evidentiary hearing, particularly when the underlying issue was not disputed by the State. See, e.g., State v. Clegg, 2002 UT App 279, ¶¶5-6, 54 P.3d 653 (reviewing the trial court's denial of motion for evidentiary hearing on motion to suppress for abuse of discretion and requiring disputed material facts for hearing).

Thus, the trial court did not abuse its discretion in denying James's motion to withdraw his guilty plea. Accordingly, the trial court's denial of James's motion to withdraw his guilty plea is affirmed.

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Russell W. Bench,  
Presiding Judge

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Judith M. Billings, Judge

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William A. Thorne Jr., Judge

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1. James argues that the case should be remanded for specific factual findings pursuant to State v. Humphrey, 2003 UT App 333, 79 P.3d 960. Remand is unwarranted given the explicit factual detail given by the trial court for its decision to deny James's motion to withdraw his guilty plea.