

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

State of Utah,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Plaintiff and Appellee,)		
)	Case No. 20070231-CA	
v.)		
)	F I L E D	
Daniel Steven White,)	(March 12, 2009)	
)		
Defendant and Appellant.)	<table border="1"><tr><td>2009 UT App 69</td></tr></table>	2009 UT App 69
2009 UT App 69			

Fourth District, Provo Department, 051404350
The Honorable James R. Taylor
The Honorable Lynn W. Davis

Attorneys: Thomas M. Burton, Salt Lake City, for Appellant
Mark L. Shurtleff and Christine F. Soltis, Salt Lake
City, for Appellee

Before Judges Greenwood, Bench, and Orme.

GREENWOOD, Presiding Judge:

Defendant Daniel Steven White appeals his conviction of two counts of dealing in material harmful to a minor. He argues that the trial court erred in denying his motion to withdraw his guilty pleas, that the trial court lacked authority to order him to submit to psychosexual evaluations prior to sentencing, and that the state's Diagnostic Unit is unconstitutional. We affirm.

Defendant's primary argument on appeal addresses the trial court's denial of his motion to withdraw his guilty pleas. "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 may be withdrawn only upon leave of the court and a showing that it was not knowingly and voluntarily made."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) (2008). Thus, the trial court's consideration of Defendant's motion to withdraw his guilty pleas was properly limited to a determination of whether Defendant's pleas were entered "knowingly and voluntarily." See Medel v. State, 2008 UT 32, ¶ 26, 184 P.3d 1226. We review the trial court's denial of Defendant's motion to withdraw his guilty pleas for an abuse of discretion and "will disturb findings of fact made in connection with [such] a ruling . . . only if they are clearly erroneous." State v. Beckstead, 2006 UT 42, ¶ 7, 140 P.3d 1288. Furthermore, our "review of a trial court's denial of

a motion to withdraw [a guilty plea] is not limited to the denial of the motion itself." State v. Dean, 2004 UT 63, ¶ 12, 95 P.3d 276. Appellate courts "may consider the facts and circumstances in which the plea was taken" as well as "the record of the plea proceedings, including the plea colloquy and plea affidavit or statement." Id.

Defendant first argues that his pleas were not valid because the prosecutor failed to provide transcripts of interviews of the victim to Defendant prior to entry of his guilty pleas. The trial court reviewed the interview transcripts requested by Defendant and noted that, although reluctant at first, the victim "plainly described" the sexual conduct between herself and Defendant. The trial court further determined that, contrary to Defendant's assertion, the interview transcripts fail to "reveal either an inability or refusal [of the victim] to testify." In light of this, the trial court concluded that the transcripts provided nothing new "showing [that Defendant's] plea[s] w[ere] not done 'knowingly.'"

Defendant also argues that his guilty pleas were premised upon the prosecutor's agreement that Defendant would not serve any time in prison. And, at Defendant's sentencing hearing, the prosecutor "concede[d] that [the State] agreed not to recommend a prison term." The only other information before the trial court was Defendant's affidavit in support of his pleas and the plea hearing transcript. Defendant's plea affidavit included the following: "all the promises, duties and provisions of the plea bargain, if any, are fully contained in this statement"; Defendant would plead guilty to the two "harmful material" counts and the matter would be referred to Adult Probation and Parole for a sentencing recommendation; and any sentencing recommendation would not be binding upon the trial court. The plea hearing transcript added that the State would dismiss the additional charges in exchange for Defendant's pleas. Moreover, the hearing transcript demonstrated that the trial court had informed Defendant of the possible punishments associated with his guilty pleas, which punishments included incarceration in prison.

And finally, Defendant argues for the first time on appeal that his actions did not fit the spirit, nor meet the elements, of the statute to which he ultimately pleaded guilty. The plea hearing transcript shows that the elements of the charges to which Defendant was pleading were explained to Defendant, and Defendant stated that he understood the charges. The factual basis supporting the charges was also read at the hearing and Defendant responded in the affirmative when asked if the factual basis "was what happened."

We therefore conclude that the trial court acted within its discretion in determining that the pleas were knowing and voluntary and in denying Defendant's motion to withdraw his guilty pleas.

Defendant raises two additional arguments on appeal: (1) that the trial court lacked authority to order psychosexual evaluations of him and (2) that the state's Diagnostic Unit is unconstitutional. We do not reach the merits of either of these arguments.

Defendant asserts that he was not convicted of a sex offense, and accordingly, argues that the trial court lacked authority "to order [Defendant] to submit to two dehumanizing psychosexual evaluations." Although Defendant objected to this testing as one-sided and flawed,¹ Defendant never objected to the trial court's authority to order such testing. Because Defendant failed to raise this issue "to a level of consciousness before the trial court," see State v. Dean, 2004 UT 63, ¶ 13, 95 P.3d 276 (internal quotation marks omitted), and has not argued that the trial court committed plain error or that exceptional circumstances exist, we decline to address this issue for the first time on appeal, see State v. Holgate, 2000 UT 74, ¶ 11, 10 P.3d 346.

Defendant also contends that the state's Diagnostic Unit is unconstitutional because it forced Defendant to incriminate himself and because it amounted to cruel and unusual punishment. Defendant supports this argument with a reiteration of many of his other arguments on appeal, relating generally to Defendant's overarching contention that he was treated unfairly. Although Defendant did not object to the constitutionality of the Diagnostic Unit when the trial court initially ordered Defendant's evaluation, Defendant tersely raised this argument in his "Motion of [Defendant] in Opposition to Sentencing and in Support of Demand for Immediate Freedom from Unlawful [I]ncarceration." However, he supported this contention only with his affidavit as to the conditions within the Diagnostic Unit: Defendant provided the trial court with little, if any, supporting legal authority. Similarly, Defendant presents us with little supporting legal authority or analysis regarding this argument, making only bald assertions, unsupported by sufficient legal authority or analysis, so as to preclude any effective appellate review. We therefore decline to address this argument

¹Defendant's main concern regarding these testing methodologies ultimately centers around his belief that "[t]hey don't seem to be helpful in most cases [and] [t]hey are subject to a great deal of criticism."

as inadequately briefed. See State v. Thomas, 1999 UT 2, ¶ 11, 974 P.2d 269 ("[A] reviewing court is entitled to have the issues clearly defined with pertinent authority cited and is not simply a depository in which the appealing party may dump the burden of argument and research." (internal quotation marks omitted)).

Affirmed.

Pamela T. Greenwood,
Presiding Judge

WE CONCUR:

Russell W. Bench, Judge

Gregory K. Orme, Judge