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FILED
Feb 13 2009, 11:11 am
CLERK
of the supreme court, court of appeals and tax court

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IN THE
COURT OF APPEALS OF INDIANA

WILLIAM J. MELTON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 39A01-0807-CR-326
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE JEFFERSON CIRCUIT COURT
The Honorable Ted R. Todd, Judge
Cause No. 39C01-0707-FA-123

February 13, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

William J. Melton agreed to plead guilty to dealing in cocaine and conspiracy to deal in cocaine, both Class A felonies.[1] On the day of the sentencing hearing, Melton asked the trial court to set aside his plea. The trial court declined to do so and sentenced Melton in accordance with the plea agreement. Melton raises two issues, which we consolidate and restate as: whether the trial court abused its discretion by denying his motion to withdraw his guilty plea under Ind. Code § 35-35-1-4(b). Finding no abuse of discretion, we affirm.

FACTS AND PROCEDURAL HISTORY

Melton and two other people were dealing cocaine from Melton's residence. On July 26, 2007, police officers found over three grams of cocaine in his residence. In a taped interview, Melton admitted to the police that he was dealing cocaine.

Melton was charged with dealing in cocaine, a Class A felony; conspiracy to commit dealing in cocaine, a Class A felony; possession of cocaine, a Class C felony;[2] maintaining a common nuisance, a Class D felony;[3] possession of a schedule I, II, or III controlled substance, a Class D felony;[4] possession of paraphernalia, a Class A infraction;[5] and being an habitual offender.[6] Melton faced a minimum nonsuspendable sentence of twenty years due to a prior felony conviction.[7]

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[1] Ind. Code §§ 35-48-4-1 (dealing in cocaine) and 35-41-5-2 (conspiracy).
[2] Ind. Code § 35-48-4-6.
[3] Ind. Code § 35-48-4-13(b).
[4] Ind. Code § 35-48-4-7.
[5] Ind. Code § 35-48-4-8.3.
[6] Ind. Code § 35-50-2-10.
[7] *See* Ind. Code §§ 35-50-2-2(b)(1) (court may suspend only the portion of sentence in excess of minimum sentence when crime is Class A felony and person has a prior unrelated felony conviction) and 35-50-2-4 (minimum sentence for Class A felony is twenty years).

On April 3, 2008, Melton agreed to plead guilty to the two Class A felonies in exchange for a twenty-year sentence and dismissal of the remaining charges. Although it is not mentioned in the plea agreement, the parties acknowledge that as part of their negotiations, the State agreed to wrap up proceedings on a probation violation and allow Melton to be released on bond prior to sentencing in this case. (Tr. at 29, 31.)

The trial court read the plea agreement into the record. The agreement included a recitation of the rights Melton was waiving and acknowledged Melton was satisfied with counsel's representation and believed the plea agreement was in his best interest. After reading the plea agreement, the trial court asked Melton, "Now is that your agreement and understanding?" (*Id*. at 8.) Melton responded, "Yes, sir," and further indicated that he had no questions. (*Id*.) The trial court accepted the plea agreement and scheduled a sentencing hearing for May 28, 2008.

The morning of the sentencing hearing, Melton filed a letter asking the trial court to set aside his plea. He alleged he was forced to plead guilty so he could be released on bond and counsel had a conflict of interest because she represented his ex-girlfriend in a custody case involving their children. At the hearing, Melton stated he believed counsel had "inside information on me that she could hold against me, whether she would or she wouldn't. I don't know, Your Honor." (*Id*. at 24.) He alleged she had waited two weeks to inform him of the plea offer and she had mishandled "several other things and some of them I can't mention in open court because it would be part of my defense." (*Id*. at 24-25.) Melton stated he did not raise these issues at the plea hearing "because I wanted to get out of being locked up. My mother and my grandmother was [sic] on the borderline

of dying. I wanted to spend some time with them before I had a long, lengthy prison sentence." (*Id*. at 27-28.)

Melton's counsel acknowledged representing Melton's ex-girlfriend in a CHINS proceeding, but stated she did not "believe I got any information through the CHINS matter that affected . . . my dealing in Mr. Melton's case in any way, shape or form. I didn't learn anything in those cases . . . that I didn't learn from Mr. Melton himself." (*Id*. at 30.) The trial court declined to set aside Melton's plea and sentenced him to twenty years in accordance with the plea agreement.

DISCUSSION AND DECISION

Melton argues the trial court erred by not setting aside his plea. Ind. Code § 35-35-1-4(b) provides:

> After entry of a plea of guilty, . . . but before imposition of sentence, the court may allow the defendant by motion to withdraw his plea of guilty . . . for any fair and just reason unless the state has been substantially prejudiced by reliance upon the defendant's plea. The motion to withdraw the plea of guilty . . . made under this subsection shall be in writing and verified. The motion shall state facts in support of the relief demanded, and the state may file counter-affidavits in opposition to the motion. The ruling of the court on the motion shall be reviewable on appeal only for an abuse of discretion. However, the court shall allow the defendant to withdraw his plea of guilty . . . whenever the defendant proves that withdrawal of the plea is necessary to correct a manifest injustice.

One who appeals an adverse decision on a motion to withdraw must prove by a preponderance of the evidence the trial court abused its discretion. *Turner v. State*, 843 N.E.2d 937, 941 (Ind. Ct. App. 2006), *reh'g denied*.

We first note that although Melton was represented by counsel, he made his motion for withdrawal of guilty plea *pro se*. A trial court is not required to respond to

pro se motions by a defendant who is represented by counsel. *Underwood v. State*, 722 N.E.2d 828, 832 (Ind. 2000), *reh'g denied*. Furthermore, Melton's motion was not verified, as required by Ind. Code § 35-35-1-4(b). "A defendant's failure to submit a verified, written motion to withdraw a guilty plea generally results in waiver of the issue of wrongful denial of the request." *Carter v. State*, 739 N.E.2d 126, 128 n.3 (Ind. 2000).

Waiver notwithstanding, Melton has not demonstrated manifest injustice or abuse of discretion. Melton argues trial counsel had a conflict of interest because she

> had a loyalty to [Melton's ex-girlfriend] to try to keep custody of the children. This would compromise counsel's representation of Mr. Melton in the present case because if Mr. Melton pled guilty and was incarcerated, custody would more likely be returned to the mother.

(Appellant's Br. at 5.) Melton cites no evidence or authority in support of this argument. Melton would not have been an adverse party in the CHINS proceeding, and Melton's counsel denied learning anything from that proceeding that she did not already know from Melton himself. The record reflects she took appropriate steps to defend him and obtained a favorable plea agreement.

Nor do we find merit in Melton's argument that he was coerced to plead guilty. Melton stated he felt forced to accept the agreement "because I wanted to get out of being locked up" so he could see his ailing mother and grandmother. (Tr. at 27-28.) Doubtless most criminal defendants have a reason why they would like to "get out of being locked up," but Melton's personal circumstances are not State coercion. He cites no evidence the State knew of his relatives' health or used that information to coerce him. Melton affirmed at the plea hearing that he believed the plea was in his best interest. Melton

received the minimum nonsuspendable sentence even though the State had overwhelming evidence. Therefore, the record reflects Melton made a voluntary, rational choice, and the trial court did not abuse its discretion by declining to set aside his plea.

Affirmed.

BRADFORD, J., and FRIEDLANDER, J., concur.