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IN THE
COURT OF APPEALS OF INDIANA

CRAIG L. MITCHELL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 30A01-0910-CR-505
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HANCOCK CIRCUIT COURT
The Honorable Richard D. Culver, Judge
Cause No. 30D01-0901-FC-19

March 4, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Craig L. Mitchell appeals from his conviction of Robbery, as a class C felony, and Theft, as a class D felony. He presents the following issue for review: Did the trial court abuse its discretion by denying Mitchell's motion to withdraw his plea of guilty?

We affirm.[1]

On January 21, 2009, the State charged Mitchell with class C felony robbery and class D felony theft. The State also filed a notice of intent to file a habitual offender enhancement. Thereafter, on July 13, the State filed an information alleging that Mitchell was a habitual offender.

On July 21, 2009, Mitchell entered into an oral open plea agreement with the State. In exchange for Mitchell's plea of guilty to the robbery and theft charges, the State dismissed the habitual offender allegation. During the change-of-plea hearing, Mitchell was advised by the court of the various constitutional rights he was waiving by pleading guilty, as well as the penalty range he was facing. The court then inquired as to a factual basis. After the State and defense counsel indicated that the parties had stipulated to the facts as set forth in the probable cause affidavit, the following discussion occurred:

> [COURT]: Alright uh the Court has reviewed the uh Probable Cause Affidavit, the police reports uh Mr. Mitchell is that uh evidence substantially true?
>
> [DEFENDANT]: No.

[1] We note that the Appellant's Appendix contains a copy of the pre-sentence investigation report (PSI) on white paper. We remind counsel that Ind. Appellate Rule 9(J) requires that documents and information excluded from public access pursuant to Ind. Administrative Rule 9(G)(1), which includes PSIs, must be filed in accordance with Ind. Trial Rule 5(G). That rule provides that such documents must be tendered on light green paper or have a light green coversheet and be marked "Not for Public Access" or "Confidential." Ind. Trial Rule 5(G)(1).

[COURT]: Ok uh what would you say your version of the facts would be?

[DEFENDANT]: My version of the facts would be contrarily different.

* * *

[Defense counsel requests a brief recess to confer with his client.]

[COURT]: Ok. Uh we're back on the record on State of Indiana versus Craig Mitchell. Uh during the uh recess uh the parties remained in Court and the uh only person who spoke with Mr. Mitchell was his attorney. Um Mr. McNew how would you like to proceed on the factual basis?

[COUNSEL]: If the Court would re-ask the question on the factual basis your Honor I believe my uh client now understands and would agree to those facts.

[COURT]: Ok. Uh Mr. Mitchell the uh facts as stated in the police report are those substantially true?

[DEFENDANT]: Yes.

Transcript at 17-18. At the conclusion of the hearing, the court accepted Mitchell's plea and scheduled the sentencing hearing for August 17.

Two days after the change-of-plea hearing, Mitchell filed a pro-se letter with the trial court. In his letter, Mitchell proclaimed his innocence and expressed his desire to withdraw his guilty plea. Though much of the letter is incoherent, Mitchell seemed to indicate that he felt "mentally…forced" to accept the plea agreement because he was "afraid of the system" and the potential habitual offender enhancement. *Appendix* at 51. Mitchell stated that accepting the plea was "stupid on [his] part" and he "shouldn't be pushed into making such blatant rash decisions." *Id*. at 52.

At the scheduled sentencing hearing the trial court indicated that it would interpret

Mitchell's letter as a motion to withdraw guilty plea. Following the hearing, at which Mitchell personally presented argument on behalf of his motion, the trial court took the matter under advisement. The following day, the trial court denied the motion and reset the cause for sentencing. Mitchell was subsequently sentenced to seven years in prison. He now appeals the denial of his motion to withdraw guilty plea.

Motions to withdraw guilty pleas are governed by Ind. Code Ann. § 35-35-1-4 (West, PREMISE through 2009 1st Special Sess.). After the plea of guilty but before sentencing, a court may grant the motion for "any fair or just reason." *Id*. The trial court, however, is required to grant the motion to prevent "manifest injustice" and is required to deny the motion when the State would be "substantially prejudiced." *Id*. Our Supreme Court has explained appellate review as follows:

> "The trial court's ruling on a motion to withdraw a guilty plea arrives in our Court with a presumption in favor of the ruling. One who appeals an adverse decision on a motion to withdraw must therefore prove the trial court abused its discretion by a preponderance of the evidence. We will not disturb the court's ruling where it was based on conflicting evidence."

Smallwood v. State, 773 N.E.2d 259, 264 (Ind. 2002) (quoting *Johnson v. State*, 734 N.E.2d 242, 245 (Ind. 2000)) (internal citations omitted).

On appeal, Mitchell raises a number of "deficiencies" during the change of plea hearing that, he alleges, when taken in totality "rise to the level of a manifest injustice requiring the court to grant Mitchell's motion to withdraw guilty plea." *Appellant's Reply Brief* at 4. We will address, however, only the claims that were raised below in support of

said motion.[2]

At the hearing on Mitchell's motion to withdraw plea agreement, the trial court gave Mitchell ample opportunity to explain the grounds for his request. Boiled down, Mitchell asserted that defense counsel convinced him to accept the plea agreement by expressing a firm belief that Mitchell would be convicted if the case went to trial and would be facing a significant habitual offender enhancement. Mitchell complained that counsel had no plan to prove his innocence and "didn't show me anything as far as being…in my corner." *Transcript* at 21. Mitchell explained that he was in a vulnerable state when he agreed to plead guilty to avoid the habitual offender enhancement and that "the more I thought about it I know that it's not the right thing for me to do." *Id*. at 24. Mitchell expressed his renewed desire to "take [his] chances" at trial. *Id*.

Our review of the record reveals no indication that Mitchell's plea was involuntary or the result of force, threat, intimidation, or coercion. To be sure, defense counsel urged Mitchell to accept the plea agreement. This advice appears to have been based upon counsel's sound professional judgment and valid assessment of the State's case against Mitchell.[3] The "pressure" resulting from said advice or from the realities of the case did not

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[2] To the extent Mitchell challenges the adequacy of the factual basis supporting the plea, which he raises for the first time on appeal, we observe simply that such a claim cannot be raised on direct appeal. *See Hayes v. State*, 906 N.E.2d 819 (Ind. 2009).

[3] As a result of the plea, Mitchell avoided a potential sentencing enhancement of up to twelve years. Further, the evidence against Mitchell appeared significant. Without detailing all the allegations in the lengthy probable cause affidavit, we simply note that Mitchell's victim was an elderly, sight-impaired, female acquaintance of his. Moreover, two of the victim's neighbors observed Mitchell flee after the victim ran from her home screaming for help. As defense counsel informed him, the case would likely come down to credibility, which would not be favorable to Mitchell. Further, Mitchell's lengthy, multi-state criminal history did not bode well for him at sentencing.

make Mitchell's plea involuntary, and after pleading guilty Mitchell did not have an absolute right to withdraw his plea, which had been accepted by the trial court. *Cf. Centers v. State*, 501 N.E.2d 415, 419 (Ind. 1986) ("[s]ome degree of intimidation and confusion will always be present and be left on poignant occasions such as these, and is consistent with the requirement of a knowing, intelligent and voluntary plea of guilty").

Mitchell noted below and also raises on appeal the lack of a written plea agreement. The State acknowledges that the plea agreement should have been in writing. *See* Ind. Code Ann. § 35-35-3-3(a) (West, PREMISE through 2009 1st Special Sess.) (requiring a plea agreement on a felony charge to be in writing). Our Supreme Court, however, has held that "the failure to reduce an agreement to writing need not itself be deemed a sufficient ground for rejection." *Centers v. State*, 501 N.E.2d at 418. Based upon the record before us, we cannot say that the lack of a written agreement materially affected Mitchell's decision to plead guilty.

> As a general rule, withdrawals of guilty pleas prior to sentencing should be freely allowed whenever it appears fair or just and motions made within a few days of the initial pleading should be favorably considered. However, unless there is a manifest injustice shown, the decision to permit withdrawal is completely within the discretion of the trial court.

Id. at 419. Mitchell has not established an abuse of discretion, let alone manifest injustice. Moreover, while the overall procedure of his guilty plea hearing could have been improved, it was not enough to render his pleas unknowing or involuntary. *See Centers v. State*, 501 N.E.2d 415.

Judgment affirmed.

NAJAM, J., and BRADFORD, J., concur.