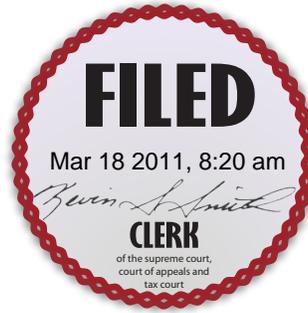


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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RYAN MICHAEL BODNAR,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 45A03-1010-CR-518

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APPEAL FROM THE LAKE SUPERIOR COURT  
The Honorable Thomas P. Stefaniak, Jr., Judge  
Cause Nos. 45G04-0909-FA-34, 45G04-0912-FA-47

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**March 18, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BRADFORD, Judge**

Appellant-Defendant Ryan Bodnar appeals following his conviction, pursuant to a guilty plea, for Class A felony Dealing in Narcotics.<sup>1</sup> Upon appeal, Bodnar challenges the trial court's denial of his motion to withdraw guilty plea by claiming that his plea was not knowing and voluntary and that it was the product of ineffective assistance of trial counsel. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

According to the stipulated factual basis for Count I in Cause Number 45G04-0909-FA-34 ("Cause No. 34"), on September 3, 2009, Bodnar sold two plastic baggies of heroin to a confidential informant at a location in Schererville. The location was 137 feet from the property of St. Michael's Catholic School, and the sale occurred during school hours, while children were present and playing on the school playground. The transaction was recorded on video.

On September 18, 2009, the State charged Bodnar in Cause No. 34 with three counts of Class A felony dealing in narcotics, alleging that he delivered heroin within 1000 feet of a school on the dates of September 3, 9, and 11, 2009 (Counts I, II, and III, respectively). On December 1, 2009, while Bodnar was out on bond in Cause No. 34, the State charged Bodnar in Cause Number 45G04-0912-FA-47 ("Cause No. 47") with one count of Class A felony (Count I) and two counts of Class B felony (Counts II and III) dealing in narcotics. According to the December 1 charging information, Bodnar and a certain Heather Piekarczyk had delivered heroin on the dates of October 15 and

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<sup>1</sup> Ind. Code § 35-48-4-1 (2009).

27, 2009, and November 9, 2009, and they had done so within 1000 feet of a school on the October 15 date.

On May 26, 2010, Bodnar was informed that the State was offering him a twenty-year plea deal. On June 7, 2010, Bodnar moved for a bond reduction. At a June 9, 2010 hearing on both matters, Bodnar entered into a plea agreement with the State whereby he agreed to plead guilty to Count I in Cause No. 34. Pursuant to the plea agreement, Bodnar agreed to be sentenced to an executed term of twenty years in the Department of Correction, and that alternative sentencing would not be an option. In exchange, the State agreed to dismiss all additional charges in Cause No. 34, and all of the charges in Cause No. 47.

During the June 9 plea hearing, the trial court remarked that Bodnar's twenty-year sentence was "a heck of a heavy hit for a twenty-five year old kid with no prior felonies." Tr. p. 15. The trial court discussed the plea agreement with defense counsel and the prosecutor, determined that Bodnar's charges in Cause No. 47 occurred while he was out on bond in Cause No. 34, and accepted the plea, finding that it was freely and voluntarily entered into. On July 16, 2010, the trial court sentenced Bodnar, consistent with his plea agreement, to twenty years in the Department of Correction.

On August 13, 2010, Bodnar, represented by new counsel, filed a motion to withdraw his guilty plea. At a September 15, 2010 hearing on the matter, Bodnar's original counsel testified that she had not taken measurements at the scene of the crime, nor had she taken depositions or investigated the identity of the informant. According to counsel, Bodnar admitted that he had committed the acts in Cause No. 34 and wished to

“take the punishment and get it over with.” Tr. p. 92. In addition, Bodnar indicated that he did not wish for Piekarczyk, who he knew was prepared to testify against him, to get into trouble.

Given Bodnar’s admissions to his defense counsel and the risk to Bodnar of going to trial, the trial court denied his request to withdraw his plea. This appeal follows.

## **DISCUSSION AND DECISION**

### **I. Standard of Review**

Indiana Code section 35-35-1-4(c) (2009) provides the applicable standard governing Bodnar’s request to withdraw his plea after imposition of his sentence:

After being sentenced following a plea of guilty, or guilty but mentally ill at the time of the crime, the convicted person may not as a matter of right withdraw the plea. However, upon motion of the convicted person, the court shall vacate the judgment and allow the withdrawal whenever the convicted person proves that withdrawal is necessary to correct a manifest injustice. A motion to vacate judgment and withdraw the plea made under this subsection shall be treated by the court as a petition for postconviction relief under the Indiana Rules of Procedure for Postconviction Remedies. For purposes of this section, withdrawal of the plea is necessary to correct a manifest injustice whenever:

- (1) the convicted person was denied the effective assistance of counsel;
- (2) the plea was not entered or ratified by the convicted person;
- (3) the plea was not knowingly and voluntarily made;
- (4) the prosecuting attorney failed to abide by the terms of the plea agreement; or
- (5) the plea and judgment of conviction are void or voidable for any other reason.

Under section 35-35-1-4(c), Bodnar’s challenge is a petition for post-conviction relief. A petitioner for post-conviction relief must establish his grounds for relief by a preponderance of the evidence. Ind. Post-Conviction Rule 1(5). When the court denies

relief, the petitioner appeals from a negative judgment, such that he must demonstrate on appeal that “the evidence as a whole leads unerringly and unmistakably to a conclusion opposite to that reached by the [lower] court.” *Ivy v. State*, 861 N.E.2d 1242, 1244 (Ind. Ct. App. 2007) (quoting *Godby v. State*, 809 N.E.2d 480, 482 (Ind. Ct. App. 2004) (internal quotations omitted)), *trans. denied*. We may reverse the court’s decision as contrary to law only if the evidence is without conflict and leads to the conclusion opposite that reached by the court below. *Id.*

A post-conviction petitioner must be allowed to withdraw his guilty plea whenever the withdrawal “is necessary to correct manifest injustice” that occurred because “the plea was not knowingly or voluntarily made.” *Lineberry v. State*, 747 N.E.2d 1151, 1155 (Ind. Ct. App. 2001) (citing Ind. Code § 35-35-1-4)). A trial court should not accept a plea of guilty unless it has determined that the plea was voluntary. *Id.* at 1155-56 (citing Ind. Code § 35-35-1-3(a)). Before accepting a guilty plea, a trial court judge is required to take steps to insure that a defendant’s plea is voluntary. *Id.* (citing Ind. Code §§ 35-35-1-2, 35-35-1-3). A guilty plea entered after the trial court has reviewed the various rights that a defendant is waiving and has made inquiries called for by statute is unlikely to be found wanting in a collateral attack. *State v. Moore*, 678 N.E.2d 1258, 1265 (Ind. 1997).

“However, defendants who can show that they were coerced or misled into pleading guilty by the judge, prosecutor or defense counsel will present colorable claims for relief.” *Id.* at 1266. In assessing the voluntariness of a plea, we will review all of the evidence before the post-conviction court, including testimony given at the post-conviction hearing, the transcript of the petitioner’s original sentencing, and any plea

agreements or other exhibits that are a part of the record. *Id.* Despite references to a plea as involuntary because it was not based on informed or effective assistance of counsel, voluntariness is distinct from ineffective assistance of counsel. *Id.* Voluntariness is not part of the ineffective assistance of counsel analysis under the Sixth Amendment. *See id.* Voluntariness in Indiana practice instead “focuses on whether the defendant knowingly and freely entered the plea, in contrast to ineffective assistance, which turns on the performance of counsel and resulting prejudice.” *Id.*

To establish ineffective assistance of counsel, Bodnar must show that (1) counsel’s performance fell below an objective standard of reasonableness, and (2) there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. *Lambert v. State*, 743 N.E.2d 719, 730 (Ind. 2001). “Manifest injustice” is a “necessarily imprecise standard,” and a trial court’s ruling comes to us with a presumption that it is correct. *Ivy*, 861 N.E.2d at 1245 (internal quotation omitted).

## **II. Analysis**

In *Segura v. State*, 749 N.E.2d 496, 507 (Ind. 2001), the Supreme Court created two categories of ineffective assistance of counsel claims relating to guilty pleas, applying different treatments to each respective category depending on whether the ineffective assistance allegation related to (1) a defense or failure to mitigate a penalty, or (2) an improper advisement of penal consequences. *See Willoughby v. State*, 792 N.E.2d at 560, 563 (Ind. Ct. App. 2003), *trans. denied*. For claims falling under the first category, a petitioner must establish a reasonable probability that a more favorable result

would have obtained in a competently run trial. *Segura*, 749 N.E.2d at 507. In other words, the petitioner must show a reasonable probability that a conviction would not have occurred but for counsel's error. *Id.* at 503. Bodnar's challenge is based upon defense counsel's alleged failure to conduct a proper inquiry into the facts of his case for purposes of developing a defense. His challenge therefore falls under the first category and is subject to this prejudice standard.

Bodnar's challenge is based upon defense counsel's admitted failure to investigate certain alleged facts of the case, including that the acts occurred within 1000 feet of a school. Yet Bodnar makes no showing that such an inquiry would have led to a successful defense at trial. Nothing in the record undermines the State's allegation that Bodnar was within 1000 feet of a school. To the contrary, as Bodnar stipulated, videotape evidence demonstrates that he was dealing 137 feet from a school while children were playing outside. Indeed, defense counsel testified at the hearing that Bodnar had admitted to all of the alleged facts, causing counsel to focus on obtaining a plea rather than preparing for trial. To the extent Bodnar's challenge rests upon defense counsel's failure to re-measure the distances alleged, he has failed to demonstrate prejudice.

Bodnar additionally challenges defense counsel's failure to depose witnesses or investigate the identity of an apparent informant. In making this challenge, Bodnar focuses on Piekarczyk, who he claims arranged and conducted the drug transactions in Cause No. 47.

Significantly, the State had obtained a proffer by Piekarczyk prior to Bodnar's plea demonstrating that Piekarczyk was prepared to testify against Bodnar. Bodnar fails to demonstrate how depositions of Piekarczyk, or of any other person, would have contradicted the proffer or tended to prove his innocence at trial under either cause number. According to defense counsel, Bodnar indicated that he was the dealer, Bodnar knew Piekarczyk was prepared to testify against him, and Bodnar wished to shoulder the blame. There is nothing in the record to establish that, in spite of this evidence, depositions of certain persons would have served to exonerate Bodnar. This is especially so with respect to Cause No. 34, where Piekarczyk was not even allegedly involved. We find no prejudice.

To the extent Bodnar focuses on counsel's alleged failure to review his file or consult with him, the record lacks evidence tending to suggest that better review of the file or more consultation with Bodnar would have led to acquittal at trial. To the contrary, all contact between counsel and Bodnar reinforced the necessity of a plea given Bodnar's confessions of guilt and expressed wish to take responsibility. We find no prejudice.

Bodnar lastly suggests that his plea was not knowing or voluntary due to counsel's failure to inform him that the June 9, 2010 court date would be a guilty plea hearing rather than just a bond reduction hearing. Bodnar additionally argues that defense counsel failed to inform him that alternative sentencing was not an option. Significantly, the trial court, emphasizing the heavy nature of Bodnar's sentence, repeatedly asked Bodnar if he understood the terms of his plea, including that alternative sentencing was

not an option. Bodnar unequivocally and repeatedly indicated that he did. In addition, while Bodnar claims to have been surprised by the nature of the proceedings, he does not dispute that he was fully aware of the twenty-year plea offer two weeks prior to the hearing. To the extent the proceedings may have been unexpected, the twenty-year provision of the plea would not have been. Moreover, the nature of the guilty plea proceedings, in which Bodnar was fully responsive and involved, would have become abundantly clear once they commenced. The record simply does not support Bodnar's claim that he did not freely and knowingly enter into his plea.

Bodnar has failed to establish that the trial court's denial of his motion to withdraw his plea constituted an abuse of discretion. Accordingly, we affirm.

The judgment of the trial court is affirmed.

KIRSCH, J., and CRONE, J., concur.