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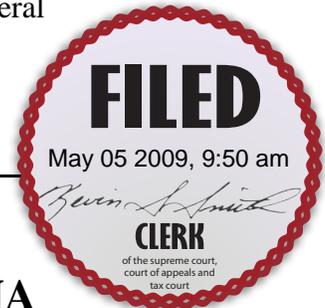
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**IN THE
COURT OF APPEALS OF INDIANA**

JEREMY C. GREENE,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 17A03-0812-CR-600

APPEAL FROM THE DEKALB SUPERIOR COURT
The Honorable Kevin P. Wallace, Judge
Cause No. 17D01-0711-FD-202

May 5, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Jeremy Greene appeals the denial of his motion to withdraw his plea of guilty to committing nonsupport of a dependent child,¹ a class D felony. We affirm.

On November 19, 2007, the State charged Greene with nonsupport of a dependent. On September 11, 2008, the parties filed a plea agreement, and the court held a hearing regarding the plea. The court explained the charges, potential ramifications, and Greene's rights, and then questioned Greene. In response, Greene stated that he suffered from no mental or emotional disability, was not under the influence of alcohol or "any drugs," intended to plead guilty to class D felony nonsupport, and was willing to give up his rights accordingly. Tr. at 5-7. In addition, Greene stated that no promises, force, or threats had induced him to plead guilty; rather, it was his free choice and decision. *Id.* at 9-10. In admitting he had failed to provide support when able to do so and under a court order, Greene candidly testified that he was "several thousand behind." *Id.* at 11, 13. After the court explained the possible penalties for a class D felony, Greene replied, "Yes, I understand." *Id.* at 9.

However, on November 7, 2008, Greene filed a verified motion for withdrawal of the guilty plea that he had entered on September 11, 2008. App. at 31-32; Tr. at 15. In that motion, he alleged that he "felt intimidated by the severity of the charges and possible sentence," that his "education level and medical condition impairs [sic] his ability to understand completely these proceedings, and the consequences of his plea," and that he "felt

¹ See Ind. Code § 35-46-1-5.

that he would be incarcerated if he didn't plead guilty pursuant to the State's Motion For Revocation of Bond." App. at 32. That same day, the court² held a hearing regarding the defense's motion.

At the November 7, 2008 hearing, Greene focused on the reality that if he missed a payment within the next three years, "they could send me to the department of corrections for a year and a half." Tr. at 22, 29 (also stating, "it's my a** on the line"; "That was the only reason I signed the plea bargain is because I didn't want to go to jail."). In addition, he claimed that he was "maybe" under the influence of prescription Vicodin at the guilty plea hearing. *Id.* at 26-27. Finally, Greene raised the question of paternity. When asked why he was first raising the issue three years after the original support order, Greene responded, "because that's the only way my family will help me," and "I can't call on the phone and talk to her, so I don't know, maybe she's not mine." *Id.* at 21-22.³

At the conclusion of the hearing, the court denied Greene's motion to withdraw his guilty plea, explaining its ruling as follows:

Well, as I said, as I said earlier, uh, I have the benefit of list-, of listening to [the recording of the guilty plea] hearing today, and, of course, I could pay particular attention to the questions that were asked and, and those parts of the hearing that I thought might be relevant, um, on a, on a withdrawal of plea issue. And I must say, uh, I could not detect, um, any hesitation or any, uh, thing on the tape that would make me believe that Mr. Greene was doing anything other than what he wanted to do. Uh, his answers to [Pro Tem] Judge Stuckey were, were clear, and by everything that I could tell, uncoerced. Um, the factual basis was clear. There was some discussion about the amount of

² A judge pro tem presided over the guilty plea hearing. Prior to holding the hearing regarding the motion to withdraw the guilty plea and ultimately ruling thereon, Judge Wallace listened to a recording of the guilty plea hearing. Tr. at 15.

³ Greene does not raise the paternity issue on appeal.

the arrears, and Mr. Greene has, has gotten into that a little bit here today, so there was some dispute regarding the arrears, but as to the, uh, heart and soul of what, of what I'm deciding here today, there was absolutely nothing on the tape in his responses or the manner in which he gave his responses that would lead me to believe that he was under coercion or, or threat, or, I understand that the proceeding itself is somewhat intimidating. I mean, after all, one side, uh, uh, the consequence, if you are found guilty, is you may go to jail. I understand that in and of itself is intimidating, but there was absolutely nothing on the tape that would lead me to believe that Mr., uh, Greene, was, um, intimidated or threatened or drugged or not understanding what was going on. And, for that reason, I'm going to deny the Motion for Withdrawal of Guilty Plea.

Id. at 31. The court then ordered a three-year sentence with all but sixty days suspended, thereby exactly tracking the plea agreement.

Indiana Code Section 35-35-1-4(b) governs motions to withdraw guilty pleas that are filed after entry of a plea of guilty, but before imposition of sentence. The trial court must allow a defendant to withdraw a guilty plea if “necessary to correct a manifest injustice.” *Brightman v. State*, 758 N.E.2d 41, 44 (Ind. 2001) (quoting Ind. Code § 35-35-1-4(b)). By contrast, the trial court must deny the motion if withdrawal of the plea would “substantially prejudice” the State. *Id.* In all other cases, the trial court may grant the defendant’s motion to withdraw a guilty plea “for any fair and just reason.” *Id.*

“Manifest injustice” and “substantial prejudice” are necessarily imprecise standards, and an appellant seeking to overturn a trial court’s decision faces a high hurdle under the current statute and its predecessors. *Coomer v. State*, 652 N.E.2d 60, 62 (Ind. 1995). “The trial court’s ruling on a motion to withdraw a guilty plea arrives in this Court with a presumption in favor of the ruling.” *Id.* We will reverse the trial court only for an abuse of discretion. *Id.* In determining whether a trial court has abused its discretion in denying a

motion to withdraw a guilty plea, we examine the statements made by the defendant at his guilty plea hearing to decide whether his plea was offered “freely and knowingly.” *Id.*

Having reviewed the transcripts from the guilty plea hearing, as well as from the hearing on the motion to withdraw, we conclude that Greene has not overcome the presumption of validity accorded the trial court’s denial of his motion. The testimony *supra* demonstrates that although Greene may not have liked pleading guilty because of the ramifications, he did so knowingly, voluntarily, and without undue intimidation. Whatever pressure he may have felt was a result of the situation in which he found himself rather than any improper coercion. As for Greene’s claim that the Vicodin and/or his level of education⁴ may have impaired his understanding, we see no indication during the guilty plea hearing that Greene was unaware of or confused by the proceedings. To the contrary, his responses were clear. Indeed, Greene did not hesitate in telling the court that he was not under the influence of any drugs. Moreover, he was able to answer questions and engage in discussions with the court and counsel. Therefore, we conclude that the court’s denial of Greene’s motion was within its discretion, and we cannot say its refusal to allow him to withdraw his guilty plea constitutes manifest injustice.

Affirmed.

BRADFORD, J., and BROWN, J., concur.

⁴ Under the education section of Greene’s presentence investigation report, the box next to “Grad/GED” has been marked. While GED is underlined, there appears to be no verification. Greene offers no additional information regarding his educational background.