



Corey Deshawn Priest pleaded guilty to Dealing in Cocaine,<sup>1</sup> a class A felony. On appeal, Priest presents two issues for review:

1. Did the trial court abuse its discretion in denying Priest's motion to withdraw his guilty plea?
2. Did the trial court abuse its discretion in sentencing Priest?

We affirm.

On December 6, 2005, members of the Southern Indiana Drug Task Force, along with officers from the Jeffersonville Police Department, conducted a "buy/bust" using a confidential informant to purchase crack cocaine from Priest. *Appendix* at 11. At 8:13 p.m., the informant called Priest and arrangements were made for Priest and the informant to meet at a Days Inn hotel. Approximately twenty-five minutes later, Priest arrived at the buy location and exchanged cocaine for cash with the informant. The exchange was witnessed by Detective Lawhorn, a member of the task force. Priest then left the scene in a red Blazer. Police officers initiated a traffic stop, and Priest was immediately detained. A search of Priest's person recovered the documented money that had been given to the informant for the drug buy. During a subsequent search of Priest's car, officers discovered a small baggy of marijuana.

On December 9, 2005, the State charged Priest with dealing in cocaine as a class B felony and possession of marijuana as a class A misdemeanor. Prior to the start of a jury trial on January 23, 2007, Priest entered into a blind plea, agreeing to plead guilty to the dealing charge and in exchange, the State agreed to dismiss the possession charge.

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<sup>1</sup> Ind. Code Ann. § 35-48-4-1 (West, PREMISE through 2007 1st Regular Sess.).

During the ensuing guilty plea hearing, the trial court asked Priest whether he was under the influence of alcohol or any drugs that would affect his understanding of the proceedings, and Priest responded that he was not. The guilty plea hearing continued with the trial court advising Priest of his rights and ensuring that Priest understood them. The trial court further questioned Priest as follows:

Q Is there anything that you have been promised to induce you to plead guilty today?

A No, sir.

Q Have you or anyone else received anything of value to induce you to plead guilty today?

A No, sir.

Q Have you or anyone else been threatened or coerced or placed in fear to induce you to plea[d] guilty today?

A I feel that as far as the circumstances that I was, and I over talked it with my two, my attorneys that I don't feel that it's being fair that, that I have to do, you [k]now, plead guilty to this.

Q No one's made any threats to you?

A Not, no, not, no.

Q Bodily harm or anything like that to you?

A Uh-uh (no).

Q Okay. The plea you're offering to make today, is this your free and voluntary choice to do this given the circumstances?

A I don't feel it's my free and voluntary choice but I talked it over with my attorneys.

Q Okay. No one's making you do this. This is a decision you're making on your own based upon your discussions with them?

A Prior to what they was, our discussion and their, the things that they was saying I made the decision because of what they was telling me.

Q Okay. I guess the point I'm trying to make is you're doing this because after consulting with them this is what you think is best for you. Is that, is that fair to say?

A To an extent.

Q Okay. Are you satisfied with your attorneys and do you feel they are properly representing you?

A No, sir.

Q All right. Mr. Priest, in order for us to deal with this and go forward, I can't go forward with the guilty plea when you're, when you're answering the questions in the manner that you're answering them.

Okay. If you tell me that you're not satisfied with them and you don't feel like you're getting represented properly then we need to deal with this a different way. And, I'm not necessarily saying that we're going to appoint you new attorneys today. So we're going to either have a jury trial with your, with your counsel or we're going to proceed with, with this. Do you understand that?

A Yes, sir.

Q Okay. Now what is, what is your answer and your opinion with regard to that question I just asked you, sir?

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A I talked it over with them and decided it's the best thing to do.

Q Okay. Let me ask you that question again. Are you satisfied with them and do you feel they are properly representing you? I know you may not be happy with what they're telling you but do you feel like they're properly representing you as counsel?

A Yes, sir.

*Transcript* at 11-13. After a discussion about penal consequences, the trial court again asked Priest if he “still want[ed] to proceed with the guilty plea on Dealing in Cocaine?” to which Priest responded, “Yes, sir.” *Id.* at 15. The court then asked for his plea to the charge of dealing in cocaine and Priest responded, “Plead guilty.” *Id.* at 16. Based upon his statements, the trial court found Priest’s plea to have been freely and voluntarily made and therefore, accepted Priest’s guilty plea to dealing in cocaine, a class B felony.

On February 7, 2007, Priest filed a pro se motion to withdraw his guilty plea. Following a hearing on February 26, 2007, the trial court denied Priest’s motion. A sentencing hearing was held June 12, 2007. The trial court sentenced Priest to fourteen years, with five years suspended.

1.

Priest argues that the trial court abused its discretion in denying his motion to withdraw his guilty plea. Ind. Code Ann. § 35-35-1-4 (West, PREMISE through 2007 1st Regular Sess.) governs withdrawal of guilty pleas. It provides:

(b) 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 . . . 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.

As noted in the statutory language, a trial court's ruling on a motion to withdraw a guilty plea is reviewed for an abuse of discretion. In determining whether a trial court abused its discretion in denying a motion to withdraw a guilty plea, we will consider the statements made by the defendant during the guilty plea hearing to decide whether the defendant's plea was made "freely and knowingly". *Brightman v. State*, 758 N.E.2d 41, 44 (Ind. 2001) (quoting *Coomer v. State*, 652 N.E.2d 60, 62 (Ind. 1995)). Further, a trial court's ruling on a motion to withdraw a guilty plea arrives before this court with a presumption in favor of the ruling. *Brightman v. State*, 758 N.E.2d 41.

In support of his motion to withdraw his plea, Priest claimed that he was not properly counseled and that he felt pressured into pleading guilty.<sup>2</sup> Priest informed the

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<sup>2</sup> We note that the State raises as a threshold issue that Priest has waived this issue for review. The State points out that Priest's motion to withdraw his guilty plea, while in writing, was not verified as required

court that he met with his counsel only one time, four days prior to his scheduled jury trial. Priest also claimed that at the time of the guilty plea hearing, he was unaware he was pleading guilty because he was under the influence of Seroquel, a prescription drug he had obtained from another inmate to relax him. Priest explained that he did not know that the medication would “take my awareness away also”. *Transcript* at 55.

The trial court rejected Priest’s claim that he was pressured into pleading guilty, concluding:

[Priest], while he did not like having to plead guilty, did knowingly and voluntarily plead guilty; understood his rights and the possible penalties he faced; and he plead guilty of his own free will, without undue intimidation by the court or his counsel.

*Appendix* at 107. Indeed, the record demonstrates that during the guilty plea hearing, the trial court informed Priest of his rights and the ramifications of pleading guilty and Priest demonstrated his understanding thereof. When the trial court became leery of some of Priest’s responses to questions about his representation, the trial court questioned him at greater length until the court became satisfied that Priest was freely and voluntarily entering his plea of guilty to dealing in cocaine. In its order denying Priest’s motion, the trial court acknowledged that Priest had expressed dissatisfaction with what his attorneys were telling him, but noted that Priest’s dissatisfaction “was more about the circumstances he found himself in rather than the incompetence of the attorneys”.

*Appendix* at 107.

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by I.C. § 35-35-1-4(b). The State, however, did not raise this argument before the trial court and such was not the basis of the trial court’s decision to deny Priest’s motion to withdraw his guilty plea. We will therefore address the merits of Priest’s claims.

The trial court also rejected Priest's claim that he should be permitted to withdraw his guilty plea because he was under the influence of a certain medication. In addition to being self-serving, such claim is not supported by the record. There was no indication during the guilty plea hearing that Priest was not aware of the proceedings and what was going on. Priest did not hesitate in telling the court that he was not under the influence of any drugs that would have affected his understanding of the proceedings. Priest was able to answer the court's questions and engage in discussions with the court and with his counsel. Indeed, the trial court found that Priest "answered all questions coherently without confusion". *Id.* at 106.

Here, there was no evidence that the State would be "substantially prejudiced", and Priest failed to demonstrate that withdrawal of his guilty plea was "necessary to correct a manifest injustice". *See* I.C. § 35-35-1-4(b). Thus, the decision to deny Priest's motion was within the trial court's discretion based upon its assessment of whether Priest had provided a fair and just reason for withdrawing his guilty plea. The trial court rejected Priest's proffered reasons and concluded that he "freely and knowingly" entered his guilty plea. *See Brightman v. State*, 758 N.E.2d at 44. Having reviewed the record, we cannot say the trial court abused its discretion in denying Priest's motion to withdraw his guilty plea.

2.

Priest argues that the trial court abused its discretion in sentencing him to fourteen years, with five years suspended.<sup>3</sup>

Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. Under the new sentencing scheme, a court may impose any sentence authorized by statute and permissible under the Indiana Constitution regardless of the presence or absence of aggravating or mitigating circumstances. *Id.* Thus, in *Anglemyer*, our Supreme Court held:

Because the trial court no longer has any obligation to “weigh” aggravating and mitigating factors against each other when imposing a sentence, unlike the pre-*Blakely* statutory regime, a trial court can not now be said to have abused its discretion in failing to “properly weigh” such factors.

*Anglemyer v. State*, 868 N.E.2d at 491. Therefore, “[t]he relative weight or value assignable to reasons properly found or those which should have been found is not subject to review for abuse.” *Id.* Circumstances under which a trial court may be found to have abused its discretion include: (1) failing to enter a sentencing statement, (2) entering a sentencing statement that includes reasons not supported by the record, (3) entering a sentencing statement that omits reasons clearly supported by the record, or (4) entering a sentencing statement that includes reasons that are improper as a matter of law.

*Anglemyer v. State*, 868 N.E.2d 482.

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<sup>3</sup> Contrary to Priest’s claim, sentencing in this case was controlled by the advisory sentencing scheme, which went into effect April 25, 2005, prior to Priest’s commission of the instant offense. *See Weaver v. State*, 845 N.E.2d 1066 (Ind. Ct. App. 2006), *trans. denied*.

In support of the sentence imposed, the trial court identified as aggravating circumstances Priest's criminal history, that he had violated probation in the past, and his admitted substance abuse, which included alcohol, marijuana, and cocaine. With regard to Priest's criminal history, the court specifically noted that it consisted of "some pretty serious physical offenses", including assault with a deadly weapon and sexual abuse.<sup>4</sup> *Transcript* at 41. Priest was also determined to be a persistent felony offender under Kentucky law. As mitigating circumstances, the trial court noted that Priest had pleaded guilty, that he had four children to support, and that he had obtained his GED.

Priest argues that the trial court attributed too much aggravating weight to his criminal history, should not have considered his prior substance abuse problems as aggravating in light of his statement during the sentencing hearing that he wished to address such issue, and that the trial court did not seriously consider the evidence in mitigation.

With regard to his criminal history, Priest takes issue with the court's mentioning of a charge of attempted rape. Immediately after referencing the attempted rape charge, however, the court noted that Priest had been acquitted of that charge. In context, it appears as though the trial court was speaking in a stream of consciousness as it reviewed the criminal history set forth in the pre-sentence investigation report. The trial court's recognition that Priest had been acquitted of the charge of attempted rape and the fact that the court did not further mention such charge leads us to conclude that the trial court did

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<sup>4</sup> Both prior convictions were entered in Kentucky.

not improperly include the charge of attempted rape as part of the criminal history the court identified as an aggravating circumstance.

Priest also takes issue with the trial court's reference to a prior misdemeanor conviction that was not supported by the evidence. The trial court's reference to a prior misdemeanor conviction appears to be taken from a statement in the pre-sentence investigation (PSI) report in which Priest told the probation officer during his pre-sentence interview that his criminal history consisted of "some misdemeanor cases of 'Assault with a Deadly Weapon' . . . ." *Appendix* at 128. In context, Priest's reference, as documented by the probation officer, appears to be to his prior conviction for assault in the first degree, a crime for which he received a five-year sentence suspended to probation and which the court properly noted. The probation officer went on to note in the PSI report that Priest made no reference to his prior felony conviction. In any event, we see no harm in the trial court's passing reference to a misdemeanor conviction that did not exist. The court was clearly more concerned with the nature of the prior offenses, not the number.

With regard to Priest's claims that the trial court improperly considered his substance abuse problems and that the trial court did not seriously consider the evidence in mitigation, such arguments are simply requests that we reassess the relative weight the trial court afforded the aggravating and mitigating circumstances. As noted above, we will not substitute our judgment for that of the trial court in this regard. Priest has not demonstrated that the trial court abused its discretion in sentencing him to fourteen years, with five years suspended.

Judgment affirmed.

KIRSCH, J., and BAILEY, J., concur.