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IN THE
COURT OF APPEALS OF INDIANA

JOHN R. KOCHOPOLOUS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A05-0911-CR-634
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas P. Stefaniak, Jr., Judge
Cause No. 45G04-0901-FC-00002; Cause No. 45G04-0903-FC-00030

June 7, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant John R. Kochopolous appeals from the denial of his motion to withdraw his guilty pleas. We affirm.

Facts and Procedural History

On January 7, 2009, the State charged Kochopolous in Lake County with Operating a Vehicle After Lifetime Suspension, a Class C felony,[1] and Operating a Vehicle While Displaying an Incorrect Registration Number, a traffic infraction,[2] under cause number 45G04-0901-FC-00002. On March 6, 2009, the State charged Kochopolous with Operating a Vehicle After Lifetime Suspension, Operating a Vehicle While Intoxicated, as a Class A misdemeanor, and Operating a Vehicle While Intoxicated, as a Class C misdemeanor under cause number 45G04-0903-FC-00030.

On September 4, 2009, Kochopolous pled guilty to the charges in both causes without the benefit of a plea agreement. When questioned by the trial court as to Kochopolous's decision to plead guilty, his attorney stated he had spoken with Kochopolous at length about the risks of going to trial versus pleading guilty and that the result of the conversation was Kochopolous's decision to plead guilty. The trial court asked numerous questions to verify that the pleas were being entered freely and voluntarily and then reviewed the rights being given up with Kochopolous, ending with: "Sir, you are convicting yourself by pleading guilty. Do you understand that?" Hearing transcript at 21. Kochopolous answered

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[1] Ind. Code § 9-30-10-17.
[2] Ind. Code § 9-18-2-27.

affirmatively. The trial court then took the pleas under advisement.

On September 17 and 30, 2009, letters were received by the Lake County Superior Court Clerk's Office from Kochopolous contending that he had been forced by his defense attorney to plead guilty to the charges, that he was innocent and that he wished to withdraw his guilty pleas. At the sentencing hearing on October 1, 2009, the trial court heard argument regarding Kochopolous's *pro se* request to withdraw his guilty pleas. The trial court asked Kochopolous if he remembered the guilty plea hearing and the long discussion of the implications of pleading guilty. He answered that he did not remember because he had a poor memory due to a prior motorcycle accident that put him in a coma for forty-five days. When the trial court asked why he thought he could beat the charges against him, Kochopolous explained in detail what he perceived to be the weaknesses of his case. The trial court responded: "Well, how do you remember that if you got a bad memory?" Tr. at 39. Kochopolous replied, "Because I got - - maybe I should just shut up." Id. The trial court denied the motion, accepted the guilty pleas, entered judgment in both cases and imposed an aggregate sentence of twelve years.

Kochopolous now appeals.

Discussion and Decision

Kochopolous contends that the trial court abused its discretion in denying his motion to withdraw his guilty pleas because of his claimed innocence, that he only pled guilty because of his attorney's instructions and that he did not remember the guilty plea hearing. According to the Indiana Supreme Court:

> Motions to withdraw guilty pleas are governed by Ind. Code § 35-35-1-4. After the plea of guilty but before sentencing, a court may grant the motion for "any fair or just reason." However, the court is required to grant the motion to prevent "manifest injustice" and is required to deny the motion when the State would be "substantially prejudiced." The trial court's decision is reviewed for abuse of discretion. Upon appeal[, t]he 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) (citations and quotations omitted).

In explaining the reasons he wished to withdraw his guilty pleas, Kochopolous alleged his innocence and that he could not remember the guilty plea hearing due to a prior accident placing him in a coma for over a month. Other than his statements, he presented no evidence of the occurrence of the accident or his alleged injuries that supposedly impacted his ability to remember. However, upon questioning, he was able to recite specific details from the occurrence of the offenses to allegedly prove his innocence. Based on Kochopolous's failure to allege his innocence at the guilty plea hearing and the equivocal explanation for the motion to withdraw the plea, the trial court concluded that Kochopolous had simply changed his mind about pleading guilty. Kochopolous has not demonstrated that such a conclusion was an abuse of the trial court's discretion.

Affirmed.

MAY, J., and BARNES, J., concur.