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IN THE
COURT OF APPEALS OF INDIANA

ROBERT HINTON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-1012-CR-1330
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven R. Eichholtz, Judge
The Honorable Michael S. Jensen, Magistrate
Cause No. 49G20-0901-FA-16921

July 6, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Robert Hinton appeals following his guilty plea to and conviction for Class A felony Dealing in Cocaine.[1] On appeal, Hinton contends that the trial court abused its discretion in denying his motion to withdraw his guilty plea. We affirm.

FACTS AND PROCEDURAL HISTORY

On January 29, 2009, the State charged Hinton with Class A felony dealing in cocaine, two counts of Class C felony possession of cocaine, Class D felony possession of a controlled substance, Class D felony maintaining a common nuisance, and Class A misdemeanor possession of marijuana.[2] On August 26, 2010, Hinton pled guilty to Class A felony dealing in cocaine. Pursuant to the terms of his plea agreement, Hinton agreed to a twenty-year executed sentence, and the State agreed to dismiss the remaining charges. Upon pleading guilty, Hinton indicated that he had read the plea agreement and that he understood its terms.

On October 19, 2010, prior to sentencing, Hinton moved to withdraw his guilty plea. The trial court denied Hinton's motion. The trial court then accepted Hinton's guilty plea and sentenced Hinton to twenty years pursuant to the terms of his plea agreement. Hinton filed a notice of appeal on December 16, 2010.[3] This appeal follows.

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[1] Ind. Code § 35-48-4-1 (2008).

[2] Hinton has failed to include the charging information relating to the instant matter in his Appellant's Appendix. We have therefore relied on the Chronological Case Summary ("CCS") to determine the charges.

[3] On November 12, 2010, Hinton filed a motion to correct error challenging the trial court's denial of his motion to withdraw his guilty plea, which the trial court construed as a motion for post-conviction relief. The trial court set a schedule for the parties' post-conviction proceedings. The post-conviction proceedings appear to be ongoing. Our review in the instant matter is limited to Hinton's direct challenge to the trial court's denial of his pre-sentencing motion to withdraw his guilty plea, and does not address any proceedings

DISCUSSION AND DECISION

Hinton contends that the trial court abused its discretion in denying his motion to withdraw his guilty plea.

> [W]hether or not to allow a defendant to withdraw a guilty plea is within the sound discretion of the trial court. *Trueblood v. State*, 587 N.E.2d 105 (Ind. 1992); *Flowers v. State*, 528 N.E.2d 57 (Ind. 1988). The trial court may refuse to allow a defendant to withdraw a guilty plea if the defendant fails to show it would result in manifest injustice. *Flowers*, 528 N.E.2d 57; Ind. Code § 35-35-1-4(b). The ruling of the court is reviewable only for abuse of discretion. *Trueblood*, 587 N.E.2d 105; Ind. Code § 35-35-1-4(b). Finally, the reviewing court will presume in favor of the trial court's ruling. *Riley v. State*, 258 Ind. 303, 280 N.E.2d 815, 817 (1972); *Bewley v. State*, 572 N.E.2d 541 (Ind. Ct. App. 1991), *trans. denied*.

Hunter v. State, 676 N.E.2d 14, 18 (Ind. 1996); *see also* Indiana Code § 35-35-1-4(b).

Hinton claims that the trial court abused its discretion in denying his motion to withdraw his guilty plea because he did not understand that, pursuant to the terms of his plea agreement, he had waived his right to request a future sentence modification. Specifically, Hinton argues that the "entirety" of the plea agreement was not fully explained to him at the time he executed the proposed plea agreement, and that he was not aware that, pursuant to Paragraph 7, he would be waiving his ability to request a future sentence modification. Appellant's App. pp. 21-22. Hinton, however, stated during the guilty plea hearing that he understood the terms of the plea agreement, including the potential penalties he faced as a result of his guilty plea. The relevant portion of Paragraph 7 of Hinton's guilty plea provides

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occurring pursuant to this apparent motion to correct error. *See* Ind. Code § 35-35-1-4(c) (construing post-sentencing challenges to a trial court's denial of a defendant's motion to withdraw a guilty plea as post-conviction proceedings).

that:

> 7. … It is further agreed that the sentence recommended and/or imposed is the appropriate sentence to be served pursuant to this agreement and the Defendant hereby waives any future request to modify the sentence under I.C. 35-38-1-17.

Appellant's App. p. 19. Hinton acknowledged before the court that he initialed Paragraph 7, that he had read all initialed sections of the plea agreement, including Paragraph 7, and that he understood each of the initialed sections. Hinton also stated that he believed it was in his best interest to plead guilty. In light of Hinton's acknowledgement that he read the plea agreement, including the initialed sections; that he understood the contents of the plea agreement, including the potential penalties he faced; and that he believed it was in his best interest to plead guilty, we conclude that Hinton failed to prove that he would suffer a manifest injustice if his guilty plea remained in place. Accordingly, the trial court did not abuse its discretion in denying Hinton's motion to withdraw his guilty plea prior to sentencing.

Hinton also claims that the trial court abused its discretion in denying his motion to withdraw his guilty plea because the trial court misstated and misapplied the law regarding future sentence modification. Hinton acknowledges that the record relating to the guilty plea hearing is silent as to whether the trial court made any statements about whether he would be entitled to request a sentence modification after pleading guilty. Our review of the record reveals that the terms of the plea agreement explicitly stated that in exchange for his guilty plea, Hinton would receive a twenty-year sentence, all of which would be executed. The plea

agreement also explicitly stated that by pleading guilty, Hinton waived any future request to modify his sentence under Indiana Code section 35-38-1-17. Hinton indicated during the guilty plea hearing that he understood all terms of his plea agreement, including the potential penalties he faced, and that he wished to plead guilty. Hinton fails to demonstrate that his guilty plea was based on a misunderstanding that would render his guilty plea involuntary. Therefore, in light of our inability to review what statements, if any, the trial court made relating to Hinton's ability to request a future sentence modification together with Hinton's express indication that he understood the terms of his plea agreement and that he wished to plead guilty, we conclude that Hinton has failed to show that the trial court abused its discretion in this regard.

The judgment of the trial court is affirmed.

BAKER, J., and MAY, J., concur.