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FILED
Jul 13 2009, 9:19 am
CLERK
of the supreme court, court of appeals and tax court

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IN THE
COURT OF APPEALS OF INDIANA

SYLVIA FIELDS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A03-0901-PC-8
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry Shewmaker, Judge
Cause No. 20C01-0610-FA-79

July 13, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Sylvia Fields appeals her conviction and thirty-year sentence for Class A felony possession of cocaine with the intent to deliver. We affirm.

Issues

Fields raises three issues, which we restate as:

I. whether the trial court abused its discretion when it denied Fields's motion to withdraw her guilty plea;

II. whether she received effective assistance of counsel; and

III. whether the sentence imposed by the trial court is appropriate considering the nature of the offense and her character.

Facts

On October 2, 2006, the State charged Fields with Class A felony possession of cocaine with intent to deliver, two counts of Class A felony dealing in cocaine, and Class B felony dealing in cocaine. Attorney Gregory Kauffman entered his appearance on May 23, 2007. On March 13, 2008, Fields pled guilty to one count of Class A felony possession of cocaine with intent to deliver. The trial court conducted a hearing on the plea the same day. The parties agreed that sentencing would be at the trial court's discretion, and the trial court took the plea under advisement.

When Fields appeared for the September 18, 2008 sentencing hearing, Attorney Kauffman's appearance was withdrawn at Fields's request. Three new attorneys appeared on behalf of Fields shortly thereafter. On November 26, 2008, Fields filed a motion to withdraw her guilty plea. She alleged that Attorney Kaufmann led her to

believe she would not have to serve time under her plea agreement if she cooperated with law enforcement. She claimed she did not knowingly and voluntarily enter the plea. The trial court held a hearing on this motion and denied it. The trial court accepted Fields's guilty plea and sentenced her to thirty years in the Department of Correction, with four years suspended to probation. She was also ordered to pay a fine of $10,000, with $9,500 suspended, and to perform 400 hours of community service. This appeal followed.

Analysis

I. Withdrawal of Guilty Plea

Fields argues the trial court abused its discretion by denying her motion to withdraw the guilty plea. A trial court's ruling on a motion to withdraw a guilty plea is reviewed with a presumption in favor of the ruling. Coomer v. State, 652 N.E.2d 60, 62 (Ind. 1995). Indiana Code Section 35-35-1-4(b) governs the withdrawal of guilty pleas prior to sentencing and provides:

> After entry of a plea of guilty, or guilty but mentally ill at the time of the crime, but before imposition of sentence, the court may allow the defendant by motion to withdraw his plea of guilty, or guilty but mentally ill at the time of the crime, 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 or guilty but mentally ill at the time of the crime made 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, or guilty but mentally ill at the time of the crime, whenever the defendant proves that withdrawal of the plea is necessary to correct a manifest injustice.

I.C. § 35-35-1-4(b).

Fields maintains that her "plea of guilty was not knowingly and voluntarily made" but a review of the transcript shows otherwise. Appellant's Br. p. 7. At the plea hearing on March 13, 2008, the trial court methodically asked Fields about every element of her guilty plea and her willingness to accept it. The trial court explained the potential sentencing implications, and Fields indicated that she understood them. The trial court also questioned Fields about Attorney Kauffman and her satisfaction with his representation. The following dialogue between Fields and the trial court was very thorough and gave Fields ample opportunity to express any misconceptions, hesitations, or concerns about accepting the plea.

> Q: Do you understand that the maximum possible sentence for this crime is 50 years in prison and a fine up to $10,000.00?
>
> A: Yes.
>
> Q: Do you understand that any history of prior criminal activity is an aggravating circumstance which can be used to enhance your sentence?
>
> A: Yes.
>
> * * * * *
>
> Q: Do you understand that I shall determine whether terms of prison shall be served consecutively or concurrently?
>
> A: Yes.
>
> * * * * *
>
> Q: Have you or has anyone else received any promises other than your plea agreement, or been given anything of value to get you to plead guilty to this charge?

A: No.

Q: Have you or has anyone else been offered any leniency or special treatment, other than your plea agreement, to cause you to enter a plea of guilty to this charge?

A: No.

Q: Has anyone forced, threatened, or placed you or anyone else in fear to cause you to plead guilty to this charge?

A: No.

Q: Do you feel that your plea of guilty is your own free and voluntary act?

A: Yes.

Q: Are you satisfied with your attorney here, Mr. Kaufmann?

A: Yes, I am.

Q: Do you feel that he is properly representing you?

A: Yes.

Q: Is there anything you feel Mr. Kauffman should have done for you that wasn't done?

A: No.

Q: Did you give Mr. Kauffman all the facts you know and discuss those facts with him?

A: Yes.

Tr. pp. 9-10, 12-13.

The trial court reviewed this dialogue when Fields presented her motion to withdraw the guilty plea. She acknowledged her previous answers and said they were not

true. Fields claimed "Mr. Kauffman told me that's how it had to be done since I was helping law enforcement. He said it could not be disclosed and I believed him." Tr. pp. 31-32. Fields did not request Attorney Kauffman's assistance be withdrawn until September 18, 2008, approximately six months after the trial court took her guilty plea under advisement. She did not move to have her guilty plea withdrawn for another two months.

Fields offers no evidence other than her own self-serving testimony that Attorney Kauffman misinformed and misled her. Our supreme court faced a similar situation in Coomer. In that case, Coomer had complained about his attorney even before entering his guilty plea and requested new counsel. Coomer, 652 N.E.2d at 62. Following the guilty plea hearing but before sentencing, new counsel was appointed and Coomer claimed his plea must be withdrawn because it was made involuntarily, he did not understand potential sentences, and he was coerced into the plea. Id. Like Fields, the trial court had closely questioned Coomer during the guilty plea hearing. He had affirmatively answered that he was freely making the plea, no threats or promises were made, and he was satisfied with his attorney's services. Id. at 63. Coomer nevertheless argued that his original attorney was not prepared to mount a strong defense and was instead "bent on striking a plea bargain." Id. at 63. Coomer did not call his original attorney as a witness during the motion to withdraw hearing and our supreme court concluded that the "trial court was entitled to infer that counsel would have testified otherwise had he been called." Id. Our supreme court concluded that ample evidence supported the refusal to withdraw Coomer's guilty plea. Id.

Fields cannot overcome the presumption that the trial court's ruling on her motion to withdraw the guilty plea is correct. It is evident that the trial court thoroughly questioned her understanding of the plea and the sentence. Fields entered into it willingly, expressing no qualms about her representation. The trial court was free to infer that Attorney Kauffman would have testified contrary to Fields's self-serving statements, had he been called as a witness.[1] See id. Fields has not demonstrated that there would have been a manifest injustice by the acceptance of her guilty plea. The trial court did not abuse its discretion by denying her motion to withdraw the guilty plea.

II. Ineffective Assistance

Fields claims that Attorney Kauffman provided ineffective assistance because he led her to believe she would serve only twenty-five years on home detention.[2] Claims of ineffective assistance of counsel are reviewed under the two-part test announced in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984). Grinstead v. State, 845 N.E.2d 1027, 1031 (Ind. 2006). A defendant must demonstrate both that counsel's performance fell below an objective standard of reasonableness based on prevailing professional norms, and that the deficient performance resulted in prejudice. Id. Prejudice occurs when the defendant demonstrates that "there is a reasonable probability

[1] Fields implies that Attorney Kauffman had moved to Ohio and was "nowhere to be found" at the time of the argument on her motion to withdraw the guilty plea. Appellant's Br. p. 10. Only Fields's own testimony supports such a statement and the record does not reflect that she made any attempt to obtain Attorney Kauffman's testimony.

[2] Post-conviction relief proceedings are the preferred method of presenting claims of ineffective assistance of counsel. McIntire v. State, 717 N.E.2d 96, 101 (Ind. 1999). Despite a contrary indication by the Indiana Appellate Court Clerk assigning the "PC" designation to the cause number, this appears to be a timely filed direct appeal and the parties brief it and treat it as such. The State does not argue that cases like Tumulty v. State, 666 N.E.2d 394, 396 (Ind. 1996) or Collins v. State, 817 N.E.2d 230, 231 (Ind. 2004), which bar challenges to a conviction following a guilty plea, apply here.

that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. (quoting Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). There is a strong presumption that counsel's representation was adequate. State v. McManus, 868 N.E.2d 778, 790 (Ind. 2007), cert. denied.

Fields contends that Attorney Kauffman failed to adequately advise her of the potential sentence that could be imposed for her Class A felony. She also contends that he intentionally misled her as to her cooperation with law enforcement and instructed her to keep those details from the trial court. Fields has only her self-serving statements to support these contentions. She fails to present clear and convincing evidence to overcome the presumption that Attorney Kauffman provided adequate representation. See Elisea v. State, 777 N.E.2d 46, 50 (Ind. Ct. App. 2002) ("We presume that counsel was competent, and this presumption is rebutted only with strong and convincing evidence.").

Even if we were to assume that Attorney Kauffman misinformed Fields about the potential sentence, it is unclear how that information would have prejudiced her. She was clearly informed as to the potential sentence by the trial court and she indicated that she understood the range. After indicating her understanding, Fields expressed her intent to move forward with the guilty plea and requested that the trial court accept it. She was then sentenced within the explained range, to the advisory sentence of thirty years. Fields failed to establish that she was prejudiced by Attorney Kauffman's performance and advice.

III. Sentence

Fields argues that her thirty-year sentence, with four years suspended to probation is inappropriate in light of the nature of the offense and her character. See Ind. Appellate Rule 7(B). Although Rule 7(B) does not require us to be "extremely" deferential to a trial court's sentencing decision, we still must give due consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. "Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate." Id.

The sentencing range for a Class A felony is twenty to fifty years, with an advisory sentence of thirty years. I.C. § 35-50-2-4. The trial court imposed the advisory sentence and suspended four years. Fields argues a positive assessment of her character is reflected in her reason for selling the cocaine. Apparently she did so to earn money for her daughter's prescription costs. Although her situation may have been dire, her daughter's circumstances do not excuse Fields's crime or reflect favorably on her character. The trial court was under no obligation to decrease the advisory sentence based on this circumstance. Fields's four prior failures to appear and three misdemeanor convictions reflected poorly on her. She did ultimately accept responsibility for her crime and cooperated with law enforcement, which reflected positively. Still, nothing outstanding in either her character or the nature of this crime merits a reconsideration of the advisory sentence. Fields fails to persuade this court that her sentence is inappropriate.

Conclusion

The trial court did not abuse its discretion by denying Fields's motion to withdraw her guilty plea. She did not have ineffective assistance of counsel. Her thirty-year sentence was appropriate. We affirm.

Affirmed.

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