



Timothy Martin brings this direct appeal challenging the trial court's denial of his motion to withdraw his plea of guilty but mentally ill to a charge of Burglary,<sup>1</sup> a class B felony.

We affirm.

The factual basis reveals that on September 6, 2009, Martin and two others broke into a home in Huntington that they expected to be unoccupied so they could steal a computer and other personal property. They removed a screen from a rear window, and one of the individuals entered the home and let the other two in the back door. Once inside, Martin and the others realized someone was home so they attempted to flee. Before Martin was able to make it out of the house, the homeowner hit him with a hockey stick and the two wrestled. Martin eventually overpowered the homeowner and ran from the house.

Shortly after fleeing, Martin realized he had forgotten his bicycle at the home and returned to retrieve it because he feared that the police would recognize it as his. When he returned to the home, the homeowner refused to give him his bike and yelled for someone to call the police. When police arrived, Martin initially accused the homeowner of attacking him as he rode his bicycle past the house. After an hour or so of questioning, Martin ultimately admitted to police that he had broken into the home to steal property.

In his initial statement to police, Martin identified one of the participants as his cousin but refused to identify the third participant. During plea negotiations, Martin decided to identify the third participant and had that individual's name hand-written into the factual basis set forth in paragraph fifteen of his motion to plead guilty.

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<sup>1</sup> Ind. Code Ann. § 35-43-2-1 (West, Westlaw through 2010 2nd Regular Sess.).

On September 8, 2009, the State charged Martin with class B felony burglary. On October 20, 2009, Martin entered a notice of mental disease or defect. On November 9, 2009, Martin entered a plea of guilty but mentally ill and the trial court took the plea under advisement. On November 16, 2009, the trial court granted Martin's request pursuant to Ind. Code Ann. § 35-36-2-5(b) (West, Westlaw through 2010 2nd Regular Sess.)<sup>2</sup> that a psychological examination be performed. Over the next few months, several status hearings were held and sentencing was continued pending completion of the psychological evaluation. The evaluation was completed on March 8, 2010 and a sentencing hearing was then scheduled for March 29, 2010. At the start of the sentencing hearing, Martin advised the court that he wished to withdraw his plea of guilty but mentally ill. The court scheduled a hearing on Martin's motion to withdraw for April 12, 2010. During that hearing, the court denied Martin's request, accepted his plea of guilty but mentally ill, and sentenced Martin to sixteen years incarceration. Martin now appeals.

Martin argues that the trial court abused its discretion in denying his motion to withdraw his plea of guilty but mentally ill. Ind. Code Ann. § 35-35-1-4(b) (West, Westlaw through 2010 2nd Regular Sess.) states the applicable standard when a defendant seeks to withdraw a guilty plea before the trial court has imposed a sentence:

After entry of a plea of guilty . . . but before imposition of sentence, the court may allow the defendant by motion to withdraw his plea ... for any fair and just reason unless the state has been substantially prejudiced by reliance upon the defendant's plea . . . . The ruling of the court on the motion shall be

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<sup>2</sup>That provision provides that whenever a defendant pleads guilty but mentally ill, "the court shall require the defendant to be evaluated by a physician licensed under IC 25-22. 5 who practices psychiatric medicine, a licensed psychologist, or a community mental health center (as defined in IC 12-7-2-38)." I.C. § 35-36-2-5(b).

reviewable on appeal only for an abuse of discretion. However, the court shall allow the defendant to withdraw his plea . . . whenever the defendant proves that withdrawal of the plea is necessary to correct a manifest injustice.

Our appellate courts have interpreted this statute to require a trial court to grant such a request where the defendant “proves that withdrawal of the plea is necessary to correct a manifest injustice.” *Weatherford v. State*, 697 N.E.2d 32, 34 (Ind. 1998) (citation omitted). “The court must deny a motion to withdraw a guilty plea if the withdrawal would result in substantial prejudice to the State.” *Id.* “Except under these polar circumstances, disposition of the petition is at the discretion of the trial court.” *Id.*

The trial court’s ruling on a motion to withdraw a guilty plea comes to us with a presumption in favor of the ruling. *Weatherford v. State*, 697 N.E.2d 32. “An appellant of an adverse decision on a motion to withdraw must prove the court abused its discretion by a preponderance of the evidence. In evaluating a defendant’s arguments on this point, we will not disturb the trial court’s ruling where it was based on conflicting evidence.” *Id.* at 34 (citations omitted). In determining whether a trial court has abused its discretion in denying a motion to withdraw a guilty plea, this Court examines the statements made by the defendant at the guilty plea hearing to decide whether his plea was offered “freely and knowingly.” *Brightman v. State*, 758 N.E.2d 41, 44 (Ind. 2001).

In his motion to withdraw his plea of guilty but mentally ill, Martin indicated his desire to maintain his innocence and repudiate his acknowledgment to the detailed factual basis set forth in his motion to enter guilty plea. On appeal, citing his low level of cognitive functioning, Martin maintains that his guilty plea was not voluntary.

During his change-of-plea hearing, Martin stated that he understood the purpose of the

hearing and that he wished to plead guilty but mentally ill. The trial court advised Martin of the rights he was waiving by pleading guilty. Martin stated that he understood he was giving up his right to a trial, that no promises or threats had been made against him, and that it was his choice to plead guilty but mentally ill. After the advisement of rights, Martin affirmed that he still intended to plead guilty but mentally ill. Martin then accepted the detailed factual basis contained in his motion and read by the State during the hearing, which included his recent identification of the third participant in the burglary. The trial court found that Martin understood his rights and the nature of the charges, that his decision to plead guilty but mentally ill was freely and voluntarily made, and that a factual basis existed to support the plea.

In his motion to withdraw his guilty plea, Martin asserted that he wished to maintain his innocence and repudiate his acknowledgement of the factual basis. During the hearing on his motion to withdraw his guilty plea, Martin maintained that on the night of the crime, the police “manipulated” him into confessing and that, at the time he gave his statement, he was under the influence of Xanax. *Transcript* at 64. Martin directed the court to his new statement of what transpired on the night of the crime in which Martin claims that he was attacked while riding his bicycle. On appeal, Martin argues that his plea was involuntarily entered because he lacked the mental capacity to understand the proceedings or “debate his counsel’s arguments or explanation.” *Appellant’s Brief* at 7.

There is nothing in the record that even remotely indicates that Martin did not knowingly and voluntarily enter his plea of guilty but mentally ill. The transcript of the guilty plea hearing demonstrates that, although Martin expressed some confusion and

questioned his attorney about parts of the proceeding, he affirmatively answered each question after he received clarification. Martin unequivocally stated, “Yeah, I understand what we’re doing today.” *Transcript* at 22. Martin also indicated that he understood his rights and waived those rights.

Further, prior to the guilty plea hearing, Martin signed a lengthy and detailed motion to change his plea to guilty but mentally ill. Martin’s counsel attached a certificate thereto in which he indicated that he had read and fully explained to Martin the accusations against him and the forgoing motion to plead guilty. Martin’s counsel certified that the factual basis was consistent with the facts as related to him by Martin and that Martin’s plea of guilty was consistent with counsel’s advice.

With regard to his claim of being manipulated into confessing, the trial court was not persuaded. The trial court explained:

As I understand your client’s argument . . . is that when he was with the police he was, he said it, he was manipulated however, in paragraph fifteen of the motion to enter a plea of guilty it’s very complete and not only is it complete, at the time that it was signed I’m now made aware of the fact that not only did [Martin] read it over he made a change to it which made it more complete with respect to the statement he gave the night that he was arrested. And it would strike me that based upon that he knew quite well what he was doing and was not being manipulated at that time he was being an active participant in what was going on and understood and modified the paragraph.

*Id.* at 64-65. We will not second-guess the trial court’s assessment in this regard.

Moreover, Martin has presented no persuasive argument that withdrawal of his guilty plea is necessary to correct a manifest injustice. Martin has not alleged a previously undiscovered defense or an inadequate advisement of rights. *See Turner v. State*, 843 N.E.2d 937 (Ind. Ct. App. 2006) (finding the defendant was entitled to withdraw his guilty plea to

dealing cocaine so he could assert a previously unavailable state constitutional right with regard to searches and seizures); *Shelor v. State*, 270 Ind. 454, 386 N.E.2d 690 (1979) (concluding that because the defendant was not advised of his rights at the time he pleaded guilty, his guilty plea was required to be set aside).

Here, Martin told two versions of the events on the night in question. He gave the first version to police on the night of the crime and later supplemented the name of the third participant during the plea negotiations. He gave a second version as part of his psychological evaluation and for sentencing purposes. In seeking to withdraw his plea, Martin wants to move forward with a trial upon the hope that the finder of fact will credit his most recent version of events. Under these circumstances, withdrawal of the guilty plea was not necessary to correct a manifest injustice. The trial court acted within its discretion in denying Martin's motion to withdraw his plea of guilty but mentally ill.

Judgment affirmed.

BARNES, J., and CRONE, J., concur.