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IN THE
COURT OF APPEALS OF INDIANA

CHRISTOPHER YAKIM,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A03-0909-CR-409
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable John M. Marnocha, Judge
Cause No. 71D02-0806-FB-00070

November 30, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Christopher Yakim appeals from the trial court's denial of his motion to withdraw his guilty plea. Yakim raises a single issue for our review: whether the court's denial of his motion was an abuse of its discretion.

We affirm.

FACTS AND PROCEDURAL HISTORY

On June 9, 2008, the State charged Yakim with rape, as a Class B felony. On September 24, Yakim pleaded guilty. In so doing, the court engaged Yakim, who was represented by counsel at the time, in the following colloquy:

> THE COURT: Are you under the care of a doctor, psychiatrist or psychologist?
>
> THE DEFENDANT: No.
>
> THE COURT: Are you under the influence of any drugs or narcotics?
>
> THE DEFENDANT: No.
>
> THE COURT: Have you taken any prescription drugs or medication[] that you think would cause you not to be able to understand what we're doing today?
>
> THE DEFENDANT: No.
>
> THE COURT: Now I've been handed this three-page document entitled plea agreement. . . . This signature up here, is that your signature?
>
> THE DEFENDANT: Uh-huh (affirmative).
>
> THE COURT: Did you sign this agreement?
>
> THE DEFENDANT: Yes.
>
> THE COURT: Did you read it before you signed it?

THE DEFENDANT: Yes.

THE COURT: Do you think you've had enough time to speak to Mr. Skodinski [Yakim's counsel] about the plea agreement and have him answer any questions you might have?

THE DEFENDANT: Yes.

THE COURT: Do you feel that you know what you're doing today?

THE DEFENDANT: Yes.

* * *

THE COURT: Now you're pleading guilty to Rape, a Class B Felony. The charge reads: On or about the 27th day of April, 2008, in St. Joseph County, State of Indiana, you did knowingly have sexual intercourse with [J.B.] . . . when [J.B.] was unable to consent. Do you understand that charge?

THE DEFENDANT: Yes.

* * *

THE COURT: Just so I understand, Mr. Skodinski, on the factual basis what would be the facts with respect to the inability to consent?

MR. SKODINSKI: She was unconscious.

THE COURT: Okay. So in order for you to be found guilty of this offense, Mr. Yakim, the State would have to prove that on this date and in this state and county, that you had sexual intercourse with . . . [J.B.], and at the time you had sexual intercourse with her, she was unaware that the sexual intercourse was occurring; is that correct?

MR. SKODINSKI: Right.

THE COURT: Do you understand that?

THE DEFENDANT: Yes.

* * *

THE COURT: Okay. Do you understand those elements and that's what the State would have to prove for you to be found guilty of this offense; do you understand that?

THE DEFENDANT: Yes.

THE COURT: Do you understand, however, that when you plead guilty what you do[] is you tell me that those things are true; do you understand that?

THE DEFENDANT: Yes.

THE COURT: And as a result, the State would no longer have to prove those things, right?

THE DEFENDANT: Yes.

THE COURT: Do you understand that when you plead guilty, you give up you[r] right to a trial and I would enter judgment of conviction against you . . . ?

THE DEFENDANT: Yes.

THE COURT: You have the right to a public and speedy trial before a judge or a jury. You have the right to see the evidence, to face the witnesses, to confront and cross-examine those witnesses. You have the right to compulsory process. That means you have the right to use the Court's subpoena power to subpoena witnesses to show up at trial and testify on your behalf, if you wish. And you also have the right to remain silent. That means you cannot be made to testify at any hearing or trial in this case. Do you understand those rights?

THE DEFENDANT: Yes.

THE COURT: Do you understand that when you plead guilty, you waive or give up those rights?

THE DEFENDANT: Yes.

* * *

THE COURT: With your rights in mind, [and] the potential penalties I've talked to you about, do you still wish to enter into this plea agreement?

THE DEFENDANT: Yes.

* * *

THE COURT: Factual basis, please?

MR. SKODINSKI: Chris, back on April 27th of this year, you were at a party here in St. Joseph County, right?

THE DEFENDANT: Yes.

* * *

MR. SKODINSKI: And at that time did you go upstairs in a bedroom of the house that you were in?

THE DEFENDANT: Yes.

MR. SKODINSKI: And did you engage in sexual activity with [J.B.]?

THE DEFENDANT: Yes.

MR. SKODINSKI: And at the time that happened she was unconscious, right? She had too much to drink, she was passed out?

THE DEFENDANT: Yes.

MR. SKODINSKI: . . . so she didn't consent to the sexual intercourse?

THE DEFENDANT: Yes.

MR. SKODINSKI: And you did engage in sexual intercourse with her . . . ?

THE DEFENDANT: Yes.

THE COURT: Okay, I find a factual basis. Do you understand that you've admitted to me you're guilty of Rape, as a Class B Felony; do you understand that?

THE DEFENDANT: Yes.

THE COURT: Is that what you want to do today?

THE DEFENDANT: Yes.

Transcript at 3-9, 13-15.

On October 2, Yakim filed his motion to withdraw his guilty plea. In that motion, Yakim stated that his "plea was based upon a statement he gave to the police, which he does not recall giving, and was under the influence at the time." Appellant's App. at 5. Yakim also wrote a letter to the trial court in which he stated that J.B. "was not passed out when we had sexual intercourse." Id. at 12. On October 22, the court held a sentencing hearing and a hearing on Yakim's motion. The court denied Yakim's motion to withdraw his guilty plea and sentenced him accordingly. This appeal ensued.

DISCUSSION AND DECISION

Yakim contends that the trial court abused its discretion when it denied his motion to withdraw his guilty plea. As discussed by our Supreme Court:

> Indiana Code § 35-35-1-4(b) governs motions to withdraw guilty pleas. After a defendant pleads guilty but before a sentence is imposed, a defendant may motion to withdraw a plea of guilty. Id. The court must allow a defendant to withdraw a guilty plea if "necessary to correct a manifest injustice." Id.
>
> By contrast, the court must deny the motion if withdrawal of the plea would "substantially prejudice[ ]" the State. Id. In all other cases, the court may grant the defendant's motion to withdraw a guilty plea "for any fair and just reason." Id.
>
> A trial court's ruling on a motion to withdraw a guilty plea "arrives in this Court with a presumption in favor of the ruling." Coomer v. State, 652 N.E.2d 60, 62 (Ind. 1995). We will reverse the trial court only for an abuse of discretion. Id. In determining whether a trial court has abused its discretion in denying a motion to withdraw a guilty plea, we examine the statements made by the defendant at his guilty plea hearing to decide whether his plea was offered "freely and knowingly." Id.

Brightman v. State, 758 N.E.2d 41, 44 (Ind. 2001) (footnotes omitted; alteration original). Further, we will not disturb the trial court's ruling where it was based on conflicting evidence." Weatherford v. State, 697 N.E.2d 32, 34 (Ind. 1998) (citation and quotation omitted).

Yakim argues that the trial court abused its discretion for three reasons. First, Yakim says that "[h]e was confused about his options at the time of the plea." Appellant's Brief at 4. Second, Yakim, contradicting his statements at the guilty plea hearing, says that J.B. "was not unconscious at the time of the incident and the relationship was consensual." Id. And, third, Yakim says his guilty plea should be discarded because he "was intoxicated at the time he gave a statement to the police."

Each of Yakim's three purported reasons for reversing the trial court's discretionary decision must fail. Looking to the statements Yakim made at his guilty plea hearing leaves no doubt that Yakim's plea "was offered freely and voluntarily." Brightman, 738 N.E.2d at 44. The trial court thoroughly advised Yakim of the charges against him, his trial rights, and the consequences of pleading guilty, and Yakim informed the trial court that he understood each of its statements to him. Yakim's arguments on appeal are merely requests for this court to reweigh the evidence, which we will not do. See Weatherford, 697 N.E.2d at 34. Accordingly, we affirm the trial court's denial of Yakim's motion to withdraw his guilty plea.

Affirmed.

FRIEDLANDER, J., and BRADFORD, J., concur.