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ATTORNEY FOR APPELLANT:

HUGH N. TAYLOR
Auburn, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana
Indianapolis, Indiana

ANDREW R. FALK
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

MICHAEL DAVID ROBBINS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 76A03-1006-CR-328
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE STEUBEN CIRCUIT COURT
The Honorable Allen N. Wheat, Judge
Cause No. 76C01-0812-FB-1613

DECEMBER 15, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Michael David Robbins appeals the denial of his Motion to Set Aside Plea Agreement ("Motion"). We affirm.

ISSUE

Robbins raises one issue, which we restate as whether the trial court abused its discretion in denying Robbins' request to withdraw his guilty plea.

FACTS AND PROCEDURAL HISTORY

The State charged Robbins with possession of methamphetamine, a Class B felony, Indiana Code section 35-48-4-6.1(b) (2006); possession of methamphetamine, a Class D felony, Indiana Code section 35-48-4-6.1(a) (2006); and theft, a Class D felony, Indiana Code section 35-43-4-2 (1985).

The parties executed a plea agreement, in which Robbins agreed to plead guilty to possession of methamphetamine as a Class D felony and to theft in exchange for the State's dismissal of the remaining charge, as well as the dismissal of charges in two other pending cases.

Robbins filed a motion to enter a plea of guilty. The trial court held a hearing on the motion and took the matter under advisement pending a sentencing hearing. Subsequently, Robbins filed his Motion. The trial court held a hearing on Robbins' Motion and denied it. The trial court sentenced Robbins, and this appeal followed.

DISCUSSION AND DECISION

At the outset, the State asserts that Robbins has waived the issue on appeal. The State notes that a defendant who seeks to withdraw a guilty plea must file a written,

verified motion requesting that relief. *See* Ind. Code § 35-35-1-4(b) (1983). The State asserts that Robbins' Motion is not verified, and for this reason Robbins has waived appellate review of the denial of his Motion. However, the State did not raise this verification claim before the trial court. Consequently, the State cannot raise this claim on appeal. *See Craig v. State*, 883 N.E.2d 218, 220 (Ind. Ct. App. 2008) (refusing to consider the State's argument regarding lack of verification for a defendant's motion to withdraw a guilty plea because the State raised the argument for the first time on appeal).

We now turn to the merits of Robbins' appeal. Robbins asserts that his guilty plea is manifestly unjust because the State filed an additional Class C felony charge against him after he pleaded guilty, and he thought that the guilty plea was intended to address all outstanding matters.

The statute that governs motions to withdraw guilty pleas provides, in relevant part:

> 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 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). A trial court's decision on a request to withdraw a guilty plea is presumptively valid, and a party appealing an adverse decision must prove that the court has abused its discretion. *Davis v. State*, 770 N.E.2d 319, 326 (Ind. 2002).

In *Barnes v. State*, 738 N.E.2d 1093, 1094 (Ind. Ct. App. 2000), *trans. denied*, Barnes pleaded guilty and the plea agreement called for him to serve 180 days executed. At a guilty plea hearing, Barnes asserted that he had read and understood the agreement and had no questions about its terms. However, at a subsequent sentencing hearing Barnes expressed surprise at having to serve time in jail, and his counsel stated that he and Barnes appeared to have had a misunderstanding about the plea agreement. Barnes asked to withdraw his guilty plea, and the trial court denied his request. On appeal, this Court noted that Barnes had been given ample time to review the plea agreement and confer with counsel, and the sentence was clearly set forth in the agreement. *Id.* at 1096. Consequently, the misunderstanding between Barnes and his counsel did not give rise to a manifest injustice that would have required the withdrawal of Barnes' guilty plea, and this Court affirmed the trial court's ruling. *Id.*

In this case, in the parties' plea agreement Robbins stated that he was born in 1966, had completed the twelfth grade, and reads, writes, and understands English. The agreement further provided that Robbins had provided his attorney with all of the facts concerning the charges against him and that he was satisfied with his attorney's representation. Under the plea agreement, the charges against Robbins in two other pending cases would be dropped. The plea agreement did not refer to any other cases or to any pending criminal investigations against Robbins.

Next, at the hearing on Robbins' motion to enter a plea of guilty, the court reviewed the plea agreement with Robbins and noted that in exchange for Robbins' guilty plea to theft and possession of methamphetamine, the State would dismiss all other

"counts." Tr. p. 4. Robbins agreed with the court's reading of the agreement. Robbins also agreed that he had been given ample time to discuss the plea agreement with his attorney.

Subsequently, at the hearing on Robbins' Motion, Robbins informed the court that the State had filed a new Class C felony charge against him in another case. He acknowledged that the police had questioned him in relation to that matter fifteen months before he signed the plea agreement, but he "was assuming that it was not going to be pursued any further." Tr. p. 11. He testified that he thought that the plea agreement encompassed all pending charges, and that if he had known that the State intended to file the new case he would not have signed the plea agreement. Robbins' defense attorney asserted that he was unaware that the State was investigating an additional case against Robbins during plea agreement negotiations.

The trial court properly determined that Robbins had failed to demonstrate the existence of manifest injustice. At the time that Robbins signed the plea agreement, he was aware of the investigation that later resulted in the filing of the Class C felony charge. The plea agreement addressed pending charges and did not bar the State from filing new cases. Furthermore, Robbins conceded that he had received ample opportunity to consider the plea agreement and discuss it with counsel. Robbins could have discussed the pending investigation with his attorney and sought to have that matter addressed in the plea agreement. Thus, as in *Barnes*, the trial court did not abuse its discretion in refusing to allow Robbins to withdraw his guilty plea. *See Barnes*, 738 N.E.2d at 1096.

CONCLUSION

For the reasons stated above, we affirm the judgment of the trial court.

Affirmed.

MATHIAS, J., and BRADFORD, J., concur.