



## Case Summary

Appellant-Defendant Andre C. Turner appeals his conviction and sentence for Aiding, Inducing or Causing Dealing in Cocaine, as a Class B felony.<sup>1</sup> We affirm.

### Issues

Turner raises two issues on appeal:

- I. Whether the trial court abused its discretion in denying his motion to withdraw his guilty plea; and
- II. Whether his sentence is inappropriate.

### Facts and Procedural History

On August 8, 2008, the State charged Turner with Aiding, Inducing or Causing Dealing in Cocaine, as a Class B felony, Possession of Cocaine, as a Class D felony,<sup>2</sup> Maintaining a Common Nuisance, a Class D felony,<sup>3</sup> Resisting Law Enforcement, as a Class D felony,<sup>4</sup> and Criminal Recklessness, as a Class A misdemeanor.<sup>5</sup> On April 23, 2009, Turner filed a Motion to Withdraw Former Plea of Not Guilty and Enter a Plea of Guilty. The motion detailed the plea agreement reached between Turner and the State:

- (b) as a result of a plea agreement the Prosecutor will recommend:
1. Plead Guilty to Count I Aiding Inducing or [C]ausing Dealing in Cocaine.
  2. Sentenced to 10 years Indiana Department of Correction all executed.
  3. [P]ay court costs[.]
  4. All other counts (in this cause number only) dismissed.

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<sup>1</sup> Ind. Code §§ 35-41-2-4 and 35-48-4-1(a)(1).

<sup>2</sup> Ind. Code § 35-48-4-6(a).

<sup>3</sup> Ind. Code § 35-48-4-13.

<sup>4</sup> Ind. Code § 35-44-3-3.

<sup>5</sup> Ind. Code § 35-42-2-2.

Appendix at 142. After a hearing on the motion, the trial court took the motion under advisement and ordered the preparation of a Pre-Sentence Report. On July 16, 2009, Turner filed a Motion to Withdraw Plea, which was denied by the trial court the same day after a hearing. At the sentencing hearing in August of 2009, the trial court accepted the guilty plea, sentenced Turner to ten years imprisonment, all executed, and calculated his credit time.

Turner now appeals.

## **Discussion and Decision**

### **I. Motion to Withdraw Guilty Plea**

Indiana Code Section 35-35-1-4(b) provides the procedure by which a guilty plea may be withdrawn:

After entry of a plea of guilty . . . but before imposition of sentence, the court may allow the defendant by motion to withdraw his plea of guilty . . . 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 . . . 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 . . . whenever the defendant proves that withdrawal of the plea is necessary to correct a manifest injustice.

Thus, permission from the trial court is required to withdraw a guilty plea even when the plea has not yet been accepted by the trial court and the motion to withdraw is based on a protestation of innocence. Carter v. State, 739 N.E.2d 126, 130 (Ind. 2000). Denial of such a motion is reviewed for abuse of discretion. Id.

Here, there is clearly no abuse of discretion as Turner did not make a post-guilty plea

assertion of innocence. Rather, his motivation to change his plea was to obtain a better plea deal. The following exchange occurred on cross-examination of Turner at the hearing on the motion to withdraw the guilty plea:

Prosecutor: And you're not arguing that you're not guilty of the crime, you just want a better sentence, is that what I'm hearing?

Turner: I just want a better sentence than ten, do five. All I'm asking is eight, do four. . . .

Trial Transcript at 52. After further questions, the prosecutor stated that he would not change the terms of the plea agreement. The trial court then asked Turner if he was willing to accept the original term of ten years executed, and Turner responded, "Yes, I want to take the ten, do five."<sup>6</sup> Tr. at 55. The trial court did not abuse its discretion by denying the motion to withdraw Turner's guilty plea.

## II. Appropriate Sentence

Turner also contends that his sentence is inappropriate and asks us to revise it pursuant to our authority under Indiana Appellate Rule 7(B).<sup>7</sup> "When a defendant pleads guilty and agrees to a specific sentence, he waives his right to challenge the propriety of his sentence." Creech v. State, 887 N.E.2d 73, 75 (Ind. 2008). Here, the terms of the plea agreement were

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<sup>6</sup> While this statement could be considered a withdrawal of the motion, we review the trial court's official entry denying the motion.

<sup>7</sup> "Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of a sentence through Indiana Appellate Rule 7(B), which provides that a court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender. The burden is on the defendant to persuade us that his sentence is inappropriate." Reid v. State, 876 N.E.2d 1114, 1116 (Ind. 2007) (internal quotation and citations omitted).

included in the motion to plead guilty:

(b) as a result of a plea agreement the Prosecutor will recommend:

1. Plead Guilty to Count I Aiding Inducing or causing Dealing in Cocaine.
2. Sentenced to 10 years Indiana Department of Correction all executed.
3. [P]ay court costs[.]
4. All other counts (in this cause number only) dismissed.

App. at 142. Despite the use of the term “recommend,” it is clear by the statements of the parties during the hearings that all involved understood the agreement to be for the fixed term of ten years. This is made crystal clear when the trial court stated it imposed ten years because “[t]he Court is simply carrying out the deal.” Tr. at 76. The trial court had no discretion to deviate from the sentence Turner received. Therefore, his sentence is not available for Rule 7(B) review.

Affirmed.

BAKER, C.J., and ROBB, J., concur.