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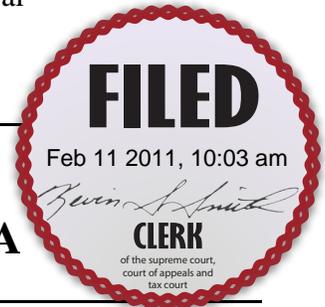
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**IN THE
COURT OF APPEALS OF INDIANA**



MICHAEL TODD HUGHES,)

Appellant-Defendant,)

vs.)

STATE OF INDIANA,)

Appellee-Plaintiff.)

No. 34A02-1008-CR-891

APPEAL FROM THE HOWARD SUPERIOR COURT
The Honorable William C. Menges, Jr., Judge
Cause No. 34D01-0512-FA-429

February 11, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Michael Todd Hughes appeals the trial court's denial of his motion to withdraw his guilty plea. Hughes raises a single issue for our review, namely, whether the trial court erred when it denied his motion.

We affirm.

FACTS AND PROCEDURAL HISTORY

On May 11, 2005, Hughes delivered cocaine to another person within 1,000 feet of a primary school. On December 9, 2005, the State charged Hughes with two Class A felony dealing charges, a Class B felony for possession, and with being an habitual offender.

Nearly a year and one-half later, on April 20, 2007, two days before the commencement of his scheduled jury trial, Hughes filed a plea agreement in the trial court. According to the terms of the plea agreement, Hughes would plead guilty to one Class A felony and the State would dismiss the remaining charges. Three days later, on April 23, the court held a hearing on Hughes' proposed plea agreement. At that hearing, the court informed Hughes of the many rights he would forego by pleading guilty, including rights relating to the examination of the State's evidence, and Hughes agreed to forego those rights. Hughes also answered the following questions:

[The Court:] . . . Have you ever been treated for any mental illness?

[Hughes:] No, sir.

[The Court:] To your knowledge do you now suffer from any mental or emotional disability?

[Hughes:] No, sir.

[The Court:] Are you now under the influence of alcohol or any drug?

[Hughes:] No, sir.

* * *

[The Court:] Are you a drug abuser or an alcoholic?

[Hughes:] Very much so, yes.

[The Court:] You understand that under certain circumstances Indiana law permits treatment instead of imprisonment, but that by pleading guilty you're giving up the right to seek that alternative?

* * *

[Hughes:] Yeah. Yes, sir.

* * *

[The Court:] Do you feel like the plea of guilty you're offering now is your own free choice and decision?

[Hughes:] Yes.

[The Court:] Do you still want to plead guilty?

[Hughes:] Yes.

Transcript at 6, 10-12.

The court accepted the recommended plea agreement, Hughes provided testimony that established a factual basis for his crime, and the court scheduled a subsequent sentencing hearing. However, before the sentencing hearing was held, on August 10, 2007, Hughes, by counsel, filed a motion to withdraw his guilty plea. The court consolidated its sentencing hearing with the hearing on Hughes' motion on August 15. At that hearing, Hughes testified that he was under the influence of prescription

medication at the time of his guilty plea and, therefore, his plea was not entered into knowingly, voluntarily, and intelligently. The court denied Hughes' motion to withdraw his guilty plea and sentenced him accordingly. This appeal ensued.

DISCUSSION AND DECISION

Hughes contends that the trial court erred 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, and we will not reweigh the evidence. Weatherford v. State, 697 N.E.2d 32, 34 (Ind. 1998) (citation and quotation omitted).

Hughes argues that the trial court abused its discretion for the following reasons:

Hughes asserts that he was under the influence of prescription medications at the time of the plea acceptance hearing. Hughes presented . . . exhibits at the hearing Those exhibits included drug side effects

for the two prescription drugs he was taking at the time of his entering into the . . . Plea Agreement. . . . Hughes testified that he was suffering from the side effects that [a]ffected his ability to think and understand the plea agreement as a result of the medications.

Furthermore, Hughes indicated that[,] once off the medications, he more fully understood the plea agreement and believed it was unjust. Hughes indicated his innocence as to the charge of dealing. In addition, Hughes further indicated to the court his lack of understanding when he said he did not fully understand the right he was giving up to possibly being subjected to drug court as opposed to imprisonment.

Appellant's Br. at 5-6 (citations omitted).

We cannot say that the trial court abused its discretion when it rejected Hughes' motion to withdraw his guilty plea. Although Hughes now says he was mentally impaired at the time of his guilty plea, the trial court expressly inquired into his mental condition at the time and he clearly responded that he was not impaired. Hughes' mental condition was squarely before the trial court for its consideration, and we will not reconsider its assessment of that evidence. See Weatherford, 697 N.E.2d at 34. Further, the court fully informed Hughes of the rights he would forego by pleading guilty, including the opportunity for treatment alternatives to imprisonment. Again, Hughes confirmed that he understood his rights and that he still wanted to plead guilty. Accordingly, we cannot say that the trial court abused its discretion when it denied Hughes' motion to withdraw his guilty plea.

Affirmed.

DARDEN, J., and BAILEY, J., concur.