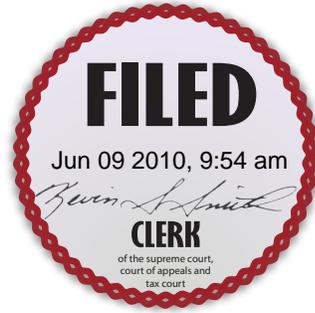


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

AARON JOHNSON,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 71A03-1001-CR-11

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Jane Woodward Miller, Judge
Cause No. 71D01-0903-MR-13

June 9, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Aaron Johnson appeals the trial court's denial of his motion to withdraw his guilty plea. The sole issue presented for our review is whether the trial court abused its discretion when it denied Johnson's motion to withdraw. We affirm.

Facts and Procedural History

The record indicates that Johnson agreed with two other individuals to rob Andrew Griffin. While the three were implementing their intended robbery plan, Griffin was shot and killed. The State charged Johnson with murder, robbery, and felony murder. On August 21, 2009, Johnson entered into a plea agreement with the State pursuant to which he admitted to accomplice liability for felony murder. The State dismissed the murder and robbery charges. Following a hearing, the trial court concluded that Johnson's guilty plea was voluntary and further found a factual basis for Johnson's plea. The trial court conditionally accepted Johnson's guilty plea, ordered the preparation of a presentence report, and scheduled a sentencing date of September 23, 2009.

On September 23, 2009, prior to sentencing, Johnson filed a written motion to withdraw his guilty plea. The trial court held a hearing on Johnson's motion to withdraw on October 19, 2009. Johnson, a long-time receiver of kidney dialysis treatment, testified that he received a dialysis treatment the night before he entered his guilty plea. Johnson testified that the treatment rendered him fatigued and impaired his thinking at the time the plea was entered and, thus, he should be permitted to withdraw his guilty plea. The trial court denied Johnson's motion to withdraw and concluded that Johnson failed to establish that withdrawal

of his plea was necessary to correct a manifest injustice. On October 29, 2009, the trial court sentenced Johnson to fifty-five years in the Department of Correction and ordered him to pay restitution. This appeal followed.

Discussion and Decision

Johnson contends that the trial court abused its discretion when it denied his motion to withdraw his guilty plea. When a defendant moves to withdraw a guilty plea prior to sentencing, Indiana Code Section 35-35-1-4(b) provides:

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 motion to withdraw the plea of guilty or guilty but mentally ill at the time of the crime 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, 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.

Therefore, the trial court “is *required* to grant such a request only if the defendant proves that withdrawal of the plea ‘is necessary to correct a manifest injustice.’” *Coomer v. State*, 652 N.E.2d 60, 62 (Ind. 1995) (emphasis in original). The trial 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 two extreme circumstances, the decision to grant or deny the motion is at the trial court’s discretion. *Id.* The party moving for withdrawal has the burden to establish grounds for relief by a preponderance of the evidence. Ind. Code § 35-35-1-4(e). The trial

court's ruling on a motion to withdraw a guilty plea arrives on appeal with a presumption in favor of the ruling, and we will reverse only for an abuse of discretion. *Weatherford v. State*, 697 N.E.2d 32, 34 (Ind. 1998). Moreover, we will not disturb the trial court's ruling where it was based upon conflicting evidence. *Id.*

Johnson first asserts that he entered his guilty plea at a time when "his thinking was impaired due to kidney dialysis" and, thus, withdrawal of his plea was necessary to correct a manifest injustice. Appellant's Brief at 5. The trial court held a hearing on Johnson's motion to withdraw, during which Johnson testified that he was "tired" and "dizzy" the day he entered into his plea agreement and that he "just really wanted to get it over with." Tr. at 33. However, after receiving Johnson's testimony, the trial court observed that Johnson had appeared before the court on multiple occasions and that the court was well aware of Johnson's dialysis treatments when it accepted his guilty plea. Indeed, during the guilty plea hearing, the court specifically questioned Johnson about his dialysis and resultant physical and mental state. The trial court asked Johnson, "[T]he condition that you have that requires that you do dialysis, does it in any way affect your ability to think or reason or anything like that?" Tr. at 4. Johnson answered, "No." *Id.* At the motion to withdraw hearing, the trial court noted that Johnson appeared in essentially the same physical and mental state as he had on the day of the guilty plea hearing. The trial court did not find Johnson's explanation that his dialysis adversely affected his mental state to be credible. Instead, as found by the trial court, the record indicates that Johnson merely changed his mind. Johnson has failed to

establish, by a preponderance of the evidence, that withdrawal of his guilty plea was necessary to correct a manifest injustice.

Additionally, Johnson maintains that withdrawal of his plea was warranted because there was an inadequate factual basis to support his guilty plea. While generally a post-judgment attack on the factual basis underlying a guilty plea may not be challenged on direct appeal, *see Tumulty v. State*, 666 N.E.2d 394 (Ind. 1996), a defendant challenging the denial of his motion to withdraw his guilty plea prior to sentencing may raise the issue on direct appeal. *See Brightman v. State*, 758 N.E.2d 41, 44 (Ind. 2001). Still, Johnson fails to establish an abuse of discretion.

A trial court may not accept a guilty plea unless it determines that a sufficient factual basis exists to support the plea. Ind. Code § 35-35-1-3(b). Like other parts of the plea process, trial court determinations of adequate factual basis arrive on appeal with a presumption of correctness. *Butler v. State*, 658 N.E.2d 72, 77 (Ind. 1995). A factual basis exists when there is evidence about the elements of the crime from which a trial court could reasonably conclude that the defendant is guilty. *Dewitt v. State*, 755 N.E.2d 167, 172 (Ind. 2001). The factual basis need not be established beyond a reasonable doubt and, instead, relatively minimal evidence may be adequate. *Id.* Indeed, the defendant's admission of guilt following the prosecutor's reading of the allegations is sufficient to establish a factual basis for the entry of a guilty plea. *Lowe v. State*, 455 N.E.2d 1126, 1129 (Ind. 1983).

In his motion to withdraw his guilty plea, Johnson asserted that the trial court should permit withdrawal of his plea because he “did not aid, encourage or cause the conduct that

resulted in the death of Andrew Griffin.” Appellant’s App. at 15. Thus, on appeal, he asserts that an insufficient factual basis existed to support his guilty plea for felony murder. However, during the guilty plea hearing, the felony murder charge was read to Johnson. Johnson acknowledged that he understood the charge and admitted the essential facts underlying the charge. Johnson admitted that he entered into an agreement with two individuals to rob Griffin. Johnson also admitted that he and those individuals went to Griffin’s residence with the intent to rob Griffin and that Griffin was shot and killed by one of the other individuals. Johnson stated that he understood that he was admitting to the commission of felony murder under a theory of accomplice liability.¹ In fact, the record shows that, even after the prosecutor read the charge and Johnson had admitted his guilt as an accomplice, the court again reminded Johnson that he was admitting to felony murder for “aiding and abetting.” Tr. at 14. Our review of Johnson’s admissions, as well as our review of the record as a whole, indicates that the trial court was presented with an adequate factual basis to support Johnson’s guilty plea. Under the circumstances, we cannot say that the trial court abused its discretion when it denied Johnson’s motion to withdraw.

Affirmed.

BAKER, C.J., and DARDEN, J. concur.

¹ Pursuant to the accomplice liability statute, a person “who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense.” Ind. Code § 35-41-2-4. Accomplice liability applies to the contemplated offense and all acts that are a probable and natural consequence of the concerted action including felony murder under a variety of circumstances. *See Wieland v. State*, 736 N.E.2d 1198, 1202-03 (Ind. 2000) (citations omitted).