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**IN THE
COURT OF APPEALS OF INDIANA**

SANTONIO JOHNSON,¹

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0610-CR-960

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Jeffrey Marchal, Commissioner
Cause No. 49G06-0509-MR-158897

July 27, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

¹ Johnson’s first name is spelled “Antonio” at various points in the record. However, the charging information, the plea agreement, and Johnson himself indicate that “Antonio” is an alias and that his true name is Santonio.

Case Summary

Santonio Johnson challenges the denial of his motion to withdraw his guilty plea. We affirm.

Issue

We restate the issue as whether the trial court abused its discretion when it denied Johnson's motion to withdraw his guilty plea.

Facts and Procedural History

According to the factual basis recited at Johnson's guilty plea hearing, on September 8, 2005, Johnson was at his Indianapolis residence. During the early morning hours, Timothy Vanzant came to Johnson's residence and began beating on his door and demanding drugs. Johnson went outside with a handgun and asked Vanzant to leave several times. A verbal argument began, which became physical. Johnson shot Vanzant in the head, killing him. On September 21, 2005, the State charged Johnson with murder and class C felony carrying a handgun without a license. On March 29, 2006, the State filed a habitual offender allegation. At a hearing on September 12, 2006, the trial court discussed with Johnson the potential benefits of accepting the plea agreement offered to him by the prosecutor and the possibilities if he went to trial and was convicted, including a possible sentence of more than 100 years. The court also asked Johnson if he understood everything the prosecutor had said to him, and Johnson answered in the affirmative. Johnson told the court that he had thought about it and discussed the matter with his sister and that he was going to accept the plea agreement. The parties signed a plea agreement whereby Johnson agreed to plead guilty to murder and class C felony criminal recklessness, to which the habitual offender enhancement

would be attached. The court personally addressed Johnson and found that he understood his rights, the nature of the charges that were filed against him, and the possible sentence and fines. Tr. at 33. The sentencing terms were a cap of fifty-five years on the murder count and open on the criminal recklessness count and habitual offender enhancement. Johnson agreed that there was a possible sentencing range from fifty-one to seventy-five years pursuant to this agreement. Appellant's App. at 149-50. The State agreed to dismiss the handgun charge and three other cases pending against Johnson. *Id.* at 149. The trial court accepted Johnson's plea and found that Johnson's plea was freely and voluntarily made.

At the sentencing hearing on September 28, 2006, Johnson asked his attorney to file a verified motion to withdraw his guilty plea. Johnson wanted to withdraw his plea because he felt that his counsel had coerced him into signing the agreement. The trial court held a hearing on the motion and allowed Johnson to file a belated verified motion.² Based on Johnson's testimony and actions at the guilty plea hearing, the court found that Johnson did not appear to have any problem with understanding the guilty plea and that he indicated several times that he was guilty of murdering Vanzant. The court further determined that there was no evidence that anyone coerced, forced, or placed any undue pressure on Johnson to get him to sign the plea agreement. Tr. at 55. The trial court denied Johnson's motion to withdraw his guilty plea, and sentenced Johnson to fifty-five years for murder and six years

² Johnson filed his belated motion on October 3, 2006. The State notes that "[t]here appears to be no disposition from Johnson's written motion" and asserts that "[i]f taken from the date of the Court's denial at the hearing on his motion to withdraw, it appears that his October 30, 2006, notice of appeal is a day late." Appellee's Br. at 6 n. 5. We note that October 29 was a Sunday and that Johnson's notice was therefore timely filed the following day. *See* Ind. Appellate Rule 25(B).

for criminal recklessness, with six years added for the habitual offender finding, to be served consecutively. Johnson now appeals.

Discussion and Decision

Indiana Code Section 35-35-1-4(b) provides that after entry of a plea of guilty, 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 court shall allow the defendant to withdraw his plea of guilty whenever the defendant proves the withdrawal of the plea is necessary to correct a manifest injustice. *Id.*

The moving party has the burden of establishing his grounds for relief by a preponderance of the evidence. The order of the court upon a motion made under subsection (b) of this section shall constitute a final judgment from which the moving party or the state may appeal as otherwise provided by law.

Ind. Code § 35-35-1-4(e).

The ruling of the court on the motion shall be reviewable on appeal only for an abuse of discretion. Ind. Code § 35-35-1-4(b). “A trial court abuses its discretion as to plea agreements only when the failure of the trial court to grant the motion would result in either a manifest injustice to the defendant or in substantial prejudice to the State.” *Johnson v. State*, 734 N.E.2d 242, 244-45 (Ind. 2000) (citation and quotation marks omitted). An abuse of discretion occurs when the trial court’s decision is against the logic and effect of the facts and circumstances before it. *Weis v. State*, 825 N.E.2d 896, 900 (Ind. Ct. App. 2005). Johnson alleges that the trial court abused its discretion in denying his motion to withdraw his guilty plea. Specifically, Johnson claims that his plea was involuntary and coerced by the court. The State contends that Johnson waived his right to raise the issue by asserting grounds on

appeal different from those argued to the trial court. We agree with the State. A defendant cannot change course and assert a different objection on appeal. *Hank v. State*, 695 N.E.2d 944, 947 (Ind. 1998).

Waiver notwithstanding, we address Johnson's argument that the trial court coerced him to plead guilty. Johnson refers to the trial court's statement at the guilty plea hearing:

I want Mr. Johnson to know that I don't know your background. I don't know your criminal history, other than the fact that I know there's at least enough for them to file the habitual. But otherwise, I don't really know anything about you. If you were to accept a plea agreement, or if you go to trial and get convicted, I am required to order a pre-sentence report, which means probation is going to do a bit of a background check on you and give me a better idea about you. Your attorney gets ability to supplement that with anything he wants to show me. And then I make a determination.

The law says that I have to look at mitigating factors, those factors which are in your favor that should allow me to bring down that sentence. And I'm sure Mr. Kamish can tell you that as a matter of routine, this Court will always find acceptance of responsibility as a mitigating factor whenever somebody steps up to the plate and accepts a plea agreement. It's especially true when you do it before trial. Maybe I don't give you as much credit if you do it midway through trial. But if you step up beforehand, that tells me you're serious about this and not playing games. And the Supreme Court says to me you can't max a guy, you shouldn't max a guy when he pleads. You've got to look at something else. Now, the State is going to try their darnedest to tell me there's all these aggravating factors out here that should allow me to move it up. But I want you to know that the acceptance of responsibility is a huge mitigator in this court, always has, always will be. If you go to trial and lose, I can't find acceptance of responsibility based upon a plea agreement because you didn't plead. You may tell me you're remorseful for your actions later, but that's a little different.

Tr. at 10-11. The court asked Johnson what he was going to do, and Johnson said that he had thought about it and discussed it with his sister and that he would accept the agreement.

"A defendant's guilty plea must be voluntary. A trial judge has a duty to assure that this is so, and to impose a sentence that fits both the crime and the offender. Judicial

participation in plea bargaining therefore presents special cause for concern.” *Ellis v. State*, 744 N.E.2d 425, 427 (Ind. 2001) (citation omitted). “A judge’s participation in the actual bargaining process presents a high potential for coercion. A judge’s primary responsibility is to maintain the integrity of the legal system by personifying evenhanded justice, recognizing that the judge’s considerable sentencing power may strongly influence the accused.” *Id.* at 427-28 (citation and quotation marks omitted). A defendant who enters a guilty plea waives several constitutional rights, including his right to trial by jury. *McCarthy v. United States*, 394 U.S. 459, 466 (1969). If a defendant’s guilty plea is not voluntary and knowing, it has been obtained in violation of due process and is void. *Id.* A guilty plea is not voluntary unless the defendant possesses an understanding of the law in relation to the facts. *Id.* The judge must inquire into the defendant’s understanding of the nature and consequences of his plea. *Id.* at 467.

The record shows that at the guilty plea hearing, the court extensively discussed the plea agreement with Johnson and the attorneys. It also shows that the court asked Johnson several times if he understood what he was agreeing to by signing the plea, and Johnson answered in the affirmative. The court informed Johnson that it would have to consider aggravating and mitigating factors if he went to trial, and that by going to trial there was a good chance that he would serve a longer sentence than if he accepted the plea. The court stated that it did not know much information about Johnson or his criminal history, but if he were to go to trial, probation would find out information about Johnson and relay it to the court. Such information would be considered in sentencing Johnson at trial. “A defendant may receive a more severe sentence following his trial than he would receive if he pleaded

guilty because the trial may reveal more adverse information about him than was previously known.” *Walker v. State*, 425 N.E.2d 425, 429 (Ind. Ct. App. 1983).

The record indicates that the trial court did not coerce Johnson to accept the guilty plea. The court merely informed Johnson of his rights and the sentencing ramifications of either pleading guilty or going to trial, and the court ensured that Johnson understood this information and that his plea was knowing and voluntary. As such, we conclude that the trial court did not abuse its discretion in denying Johnson’s motion to withdraw his guilty plea.

Affirmed.

BAKER, C. J., and FRIEDLANDER, J., concur.