2022 IL App (4th) 210192

NO. 4-21-0192

FILED
January 18, 2022
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Livingston County
WILLIE MILLSAP,	)	No. 17CF47
Defendant-Appellant.	)	
	)	Honorable
	)	Jennifer H. Bauknecht,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court, with opinion.
Presiding Justice Knecht and Justice Steigmann concurred in the judgment and opinion.

OPINION

¶ 1 In June 2017, defendant, Willie Millsap, pleaded guilty to five criminal charges arising out of a traffic stop following a police pursuit in February 2017. Defendant was found to be a passenger in a vehicle containing three firearms (a Smith and Wesson .357-caliber handgun, a Mossberg 500 12-gauge shotgun, and a Smith and Wesson M&P 15 .223-caliber rifle). In exchange for defendant's guilty plea, the State agreed to cap its sentencing recommendation at 25 years in the Illinois Department of Corrections (DOC). In September 2017, the trial court sentenced defendant to concurrent prison sentences of 30 years for being an armed habitual criminal, 15 years for aggravated possession of a stolen firearm, and 7 years for unlawful

possession of a weapon by a felon. In March 2021, defendant filed a motion to withdraw his guilty plea, which the court denied.

¶ 2 Defendant appeals, arguing he should be allowed to withdraw his guilty plea because he was denied his right to a fair sentencing hearing where the State allegedly requested a longer sentence by implication and the trial court relied on improper factors before sentencing defendant. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In February 2017, the State charged defendant by information with one count of being an armed habitual criminal, a Class X felony (count I) (720 ILCS 5/24-1.7(a)(2), (b) (West 2016)); one count of aggravated possession of a stolen firearm, a Class 1 felony (count II) (720 ILCS 5/24-3.9(a)(1), (c)(1) (West 2016)); and three counts of unlawful possession of a weapon by a felon, a Class 2 felony (counts III-V) (720 ILCS 5/24-1.1(a), (e) (West 2016)).

¶ 5 In June 2017, defendant pleaded guilty to all counts. By the time of the plea, defendant was aware he was otherwise eligible to receive a prison sentence of up to 30 years for count I (see 730 ILCS 5/5-4.5-25(a) (West 2016)), 15 years for count II (see 730 ILCS 5/5-4.5-30(a) (West 2016)), and 21 years for counts III through V (see 730 ILCS 5/5-4.5-35(a) (West 2016)). In exchange for defendant's guilty plea, the State agreed to cap its sentencing recommendation at 25 years in DOC. Prior to accepting defendant's guilty plea, the trial court admonished defendant pursuant to Illinois Supreme Court Rule 402(a) (eff. July 1, 2012). The court also informed defendant it was not bound by the State's recommendation and that defendant could be sentenced to a term of imprisonment above the recommended cap. Defendant acknowledged he understood the court was not constrained by the State's recommended

sentencing cap and agreed with the terms of the plea. Thereafter, the court found defendant knowingly and voluntarily entered the plea and the factual basis supported the plea of guilty.

¶ 6 In September 2017, the matter proceeded to sentencing. A presentence investigation report (PSI) indicated defendant was 22 years old, had one child, and was unemployed. Defendant did not possess a high school diploma or an equivalent. Defendant's felony convictions included convictions for resisting a peace officer, mob action, unlawful possession of a weapon by a felon, reckless discharge of a firearm, and criminal trespass. Defendant received sentences of probation, conditional discharge, and imprisonment. Further, defendant had one felony case pending against him (McLean County case No. 17-CF-195), which "involve[d] the alleged theft of the weapons he has admitted to being in possession of in this matter." Defendant also had three previous juvenile delinquency adjudications for criminal damage to property, aggravated assault, and aggravated battery.

¶ 7 In aggravation, the State called Sergeant Robin Bohm of the Pontiac Police Department. Sergeant Bohm testified about defendant's involvement in the firearm burglary in Chenoa, Illinois, the discovery of the vehicle in which defendant was a passenger, the vehicle's attempt to evade the police, and the eventual arrest of defendant. The State also produced the squad car video of the incident for the trial court to review before sentencing. In mitigation, defendant presented one letter of support from his son's maternal grandmother.

¶ 8 The State recommended defendant be sentenced to 25 years' imprisonment. In arguing for a prison sentence in accordance with the agreed-upon sentencing cap, the State informed the trial court it capped the offer because it believed a 25-year sentence "was the minimum *** [defendant] should serve for his crimes" and was "a sufficient punishment for his crimes but also a sufficient sentence or amount of time to protect the public from his continued

violent crimes." In mitigation, defense counsel argued "that imprisonment would entail a hardship to [defendant's] dependent." Counsel further explained his belief defendant's intoxication at the time "acted as a provocation for him, and it also helped *** to discourage his ability to contemplate whether his criminal conduct would cause or threaten serious harm." To that end, defense counsel requested the court impose the minimum sentence authorized by statute.

¶ 9 In pronouncing sentence, the trial court stated it considered (1) the PSI, (2) factors in aggravation and mitigation, (3) the nature and circumstances of the offenses, (4) the financial impact of incarceration, (5) the parties' arguments, and (6) defendant's statement in allocution. In mitigation, the court considered the hardship defendant's incarceration would have on his dependent and noted it was unknown "what contact if any [defendant] has with his son or the nature of his relationship with his son."

¶ 10 As to factors in aggravation, the trial court stated, "Now I understand [defendant] was not the one driving the vehicle. *** But there's no doubt that he was actively involved in this incident and that his conduct *** threatened very serious harm to the officers involved in the pursuit that went on for a very long time." The court also considered defendant's prior criminal record to be "a strong factor in aggravation" and noted defendant was "on conditional discharge *** for a felony offense" at the time he committed the instant offenses. Ultimately, the trial court merged counts IV and V into count III and imposed concurrent prison sentences of 30 years for count I, 15 years for count II, and 7 years for count III.

¶ 11 In October 2017, defendant filed a motion to reconsider his sentence, arguing his sentence was excessive. The trial court subsequently denied defendant's motion. Defendant appealed, and this court remanded the cause for further proceedings, directing the trial court to

properly admonish defendant regarding his appeal rights pursuant to Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001). See *People v. Millsap*, 2020 IL App (4th) 170858-U, ¶ 19.

¶ 12 In March 2021, defendant filed a motion to withdraw his guilty plea. Defendant alleged the State erroneously "implied that a longer sentence beyond the 25 year cap would be appropriate" at sentencing and that the trial court imposed an excessive sentence. Specifically, the motion alleged the court (1) improperly relied upon factors outside of the evidence and an "erroneous inference" unsupported by facts, (2) failed to properly consider defendant's youth as a mitigating factor, (3) failed to fashion a sentence with the objective of restoring defendant to useful citizenship or otherwise consider factors in mitigation, and (4) improperly considered previous convictions that served as the basis for the armed habitual criminal offense as evidence in aggravation, resulting in an impermissible double-enhancement of defendant's sentence.

¶ 13 At a hearing in April 2021, the trial court denied defendant's motion to withdraw his guilty plea, finding no legal basis to allow the plea to be withdrawn. Explaining its ruling, the court stated it reviewed defendant's motion as well as the transcripts from defendant's guilty plea and sentencing hearings. The court then stated:

> "There is nothing in the motion to vacate guilty plea that would suggest that [defendant] was under any type of misapprehension of law or fact at the time he entered into his plea of guilty.
>
> The State's assessment I think is accurate that [defendant] doesn't like the sentence, but this is not a motion to reconsider sentence. It is a motion to vacate guilty plea. They are two different things, and none of the arguments with regards to the sentence imposed actually would give rise to or support a request to vacate the guilty plea."

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 On appeal, defendant argues he should be allowed to withdraw his negotiated guilty plea because he was denied his right to a fair sentencing hearing, where the State allegedly requested a longer sentence by implication and the trial court relied on improper factors before sentencing defendant. We disagree.

¶ 17 "A defendant does not have an automatic right to withdraw [his] guilty plea, as '[a] plea of guilty is a grave act that is not reversible at the defendant's whim.' " *People v. Burge*, 2021 IL 125642, ¶ 37 (quoting *People v. Reed*, 2020 IL 124940, ¶ 47). "[F]or a defendant to prevail in a challenge to a sentence entered pursuant to a negotiated plea agreement, the defendant must (1) move to withdraw the guilty plea and vacate the judgment, and (2) show that the granting of the motion is necessary to correct a manifest injustice." *People v. Evans*, 174 Ill. 2d 320, 332, 673 N.E.2d 244, 250 (1996). In order to withdraw his plea, a defendant must establish a recognized basis for such withdrawal. See *People v. Wilson*, 295 Ill. App. 3d 228, 236, 692 N.E.2d 422, 428 (1998). "Withdrawal is appropriate where the plea was entered through a misapprehension of the facts or of the law or where there is doubt as to the guilt of the accused and justice would be better served through a trial." *People v. Hughes*, 2012 IL 112817, ¶ 32, 983 N.E.2d 439. "A defendant should not be allowed to withdraw his plea when the real basis for his withdrawal is that he is dissatisfied with the length of his sentence." *People v. Cunningham*, 286 Ill. App. 3d 346, 350, 676 N.E.2d 998, 1001 (1997).

¶ 18 "[T]he decision to grant or deny a motion to withdraw a guilty plea rests in the sound discretion of the circuit court and, as such, is reviewed for abuse of discretion." *Hughes*, 2012 IL 112817, ¶ 32. "An abuse of discretion will be found only where the court's ruling is

arbitrary, fanciful, unreasonable, or no reasonable person would take the view adopted by the trial court." *People v. Delvillar*, 235 Ill. 2d 507, 519-20, 922 N.E.2d 330, 338 (2009).

¶ 19 In this case, defendant entered a negotiated guilty plea, where he agreed to plead guilty and the State agreed to cap its sentencing recommendation at 25 years. See *People v. Robinson*, 2021 IL App (4th) 200515, ¶ 20 (finding, "a nonbinding 'recommended sentencing cap' must be treated the same as a 'binding recommended sentence cap,' even though they are substantively different in application"). Such pleas are governed by contract law. *Evans*, 174 Ill. 2d at 326. To that end, Illinois Supreme Court Rule 604(d) (eff. July 1, 2017) provides, in pertinent part: "No appeal shall be taken upon a negotiated plea of guilty challenging the sentence as excessive unless the defendant *** files a motion to withdraw the plea of guilty and vacate the judgment."

¶ 20 In support of his argument, defendant cites our supreme court's decision in *People v. Johnson*, 2019 IL 122956, 129 N.E.3d 1239, and contends "that after a negotiated plea of guilty, due process errors occurring at sentencing may be grounds for the withdrawal of that plea." Yet, in *Johnson*, our supreme court held "a defendant who enters into a negotiated plea agreement may not challenge his sentence on the basis that the court relied on improper statutory sentencing factors." *Johnson*, 2019 IL 122956, ¶ 57. In that case, the defendant entered into a negotiated plea agreement where the State agreed to dismiss certain counts and cap its sentence recommendation on the remaining charges. *Johnson*, 2019 IL 122956, ¶ 4. The trial court sentenced the defendant within the range contemplated by the plea agreement. *Johnson*, 2019 IL 122956, ¶ 11. The defendant subsequently filed a *pro se* motion to reduce his sentence. *Johnson*, 2019 IL 122956, ¶ 12. He was later granted leave to file an amended motion to withdraw his plea. *Johnson*, 2019 IL 122956, ¶ 12. The trial court denied the defendant's motions and noted "the State had already

made certain concessions at the time of the plea agreement" by reducing the sentencing range from a "15-year maximum penalty to a 13-year maximum penalty." *Johnson*, 2019 IL 122956, ¶ 14.

¶ 21 The supreme court in *Johnson* noted, in the appellate court, the "defendant abandoned any claim that the trial court erred in denying his motion to withdraw." *Johnson*, 2019 IL 122956, ¶ 16. The supreme court further noted the defendant's recourse under Rule 604(d) was to seek to withdraw the plea and return the parties to the status quo and, instead, he had "chosen to abandon any argument on appeal with respect to the withdrawal of his plea." *Johnson*, 2019 IL 122956, ¶ 47. The defendant in *Johnson* attempted to skirt Rule 604(d)'s requirements by claiming he was not challenging his sentence as excessive. *Johnson*, 2019 IL 122956, ¶ 36. Rather, the defendant maintained his "challenge [was] one of constitutional dimension that implicate[d] due process" because the trial court improperly relied on certain statutory factors in aggravation. *Johnson*, 2019 IL 122956, ¶ 36. Our supreme court found this was a "distinction without a difference" and the defendant's argument "would allow almost every sentencing challenge in a criminal case to be restated in a constitutional due process framework." *Johnson*, 2019 IL 122956, ¶ 41. The supreme court concluded a defendant, after entering into a negotiated plea agreement, may not challenge his sentence by claiming the trial court relied on improper statutory sentencing factors. *Johnson*, 2019 IL 122956, ¶ 57.

¶ 22 Despite defendant's contrary assertions, nothing suggests our supreme court, in *Johnson*, created a separate basis for withdrawal on the grounds of manifest injustice, whereby he should be permitted to withdraw his negotiated guilty plea because he was allegedly denied a fair sentencing hearing. In *Evans*, our supreme court made it clear a defendant "must (1) move to withdraw the guilty plea and vacate the judgment, *and* (2) show that the granting of the motion is necessary to correct a manifest injustice." (Emphasis added.) *Evans*, 174 Ill. 2d at 332. Further,

the basis for withdrawal lies in the claim "the plea was entered through a misapprehension of the facts or of the law or where there is doubt as to the guilt of the accused and justice would be better served through a trial." *Hughes*, 2012 IL 112817, ¶ 32. Regardless of how he frames it, defendant's motion to withdraw his plea boils down to a claim that, had the State and trial court not erred at sentencing, he should have received a lesser sentence. However, *Johnson* made it clear defendant's recourse was to move to withdraw his plea, not to argue an excessive sentence, and claiming consideration of improper sentencing factors amounts to the same thing as an excessive sentence claim. See *Robinson*, 2021 IL App (4th) 200515, ¶ 21 (collecting cases). Defendant seems to interpret Rule 604(d) to permit him to challenge his sentence simply by filing a motion to withdraw his guilty plea and vacate judgment. Regardless of how he seeks to construe the language of Rule 604(d), a defendant who enters into a negotiated plea does not get to receive the benefit of the bargain, albeit ephemeral as in this case, and still attack his sentence. See *Johnson*, 2019 IL 122956, ¶ 41. Defendant attempts to couch his claim in the language of an appeal of the trial court's denial of his motion to withdraw his plea, but as we noted above, its substance remains the same—defendant's dissatisfaction with his sentence and a claim that, for a variety of reasons, it exceeds what he should have received. See *Robinson*, 2021 IL App (4th) 200515, ¶ 21.

¶ 23 In *People v. Spriggle*, 358 Ill. App. 3d 447, 448-49, 831 N.E.2d 696, 698 (2005), the defendant pleaded guilty to first degree murder, home invasion, and residential burglary in exchange for the State's agreement not to seek the death penalty. The trial court sentenced him to a total of 66 years' imprisonment, and the defendant moved to withdraw his guilty plea. *Spriggle*, 358 Ill. App. 3d at 449. On appeal, the defendant argued he should have been permitted to withdraw his guilty plea because the 66-year sentence was excessive. *Spriggle*, 358 Ill. App. 3d at 450.

¶ 24 The *Spriggle* court found, "where the defendant has been meticulously advised of the consequences of his plea and has affirmatively acknowledged that he understands those consequences, he cannot legally complain on appeal merely because he is dissatisfied with the length of his sentence." *Spriggle*, 358 Ill. App. 3d at 455. The *Spriggle* court then held the following:

> "[M]erely filing a proper motion to withdraw his partially negotiated guilty plea pursuant to Rule 604(d) *** does not automatically allow a defendant review of the severity of his sentence. The defendant must file a motion to withdraw his guilty plea and *** convince the trial court that the motion should be granted to correct a manifest injustice." *Spriggle*, 358 Ill. App. 3d at 455.

¶ 25 Here, although defendant filed a motion to withdraw his guilty plea, he failed to show the plea was not voluntary or knowing or that the granting of his motion was necessary to correct a manifest injustice. See *Evans*, 174 Ill. 2d at 332. In fact, defendant did not even allege his plea was based on a misapprehension of law or fact or argue there was any doubt as to his guilt in his motion to withdraw his guilty plea. See Ill. S. Ct. R. 604(d) (eff. July 1, 2017) ("Upon appeal any issue not raised by the defendant in the motion to *** withdraw the plea of guilty and vacate the judgement shall be deemed waived."); see also *Wilson*, 295 Ill. App. 3d at 236. Rather, just like the defendant in *Spriggle*, the thrust of defendant's argument is his disappointment with the sentence he received.

¶ 26 What is more, the trial court advised defendant it was not bound by the terms of the plea agreement, and defendant stated he understood the terms of the agreement and the rights he would give up with his guilty plea. See *Spriggle*, 358 Ill. App. 3d at 455. Nothing in the record

indicates otherwise. Although it is true that, as a practical matter, defendant received nothing of substance in the bargain, "[w]e are obligated to follow Rule 604(d), as well as our supreme court's directive in *Johnson*, regarding the definitions currently given 'negotiated pleas.' " *Robinson*, 2021 IL App (4th) 200515, ¶ 21. To defendant's detriment, the State's nonbinding recommendation here—as in *Robinson*—fell "under the unfortunate language of Rule 604(d), as a 'negotiated plea of guilty' where the prosecution has 'bound itself to recommend *** a specific range of sentence.' " *Robinson*, 2021 IL App (4th) 200515, ¶ 20 (quoting Ill. S. Ct. R. 604(d) (eff. July 1, 2017)). The State agreed to cap its sentencing recommendation at 25 years as opposed to seeking a maximum of 30 years. The record reflects the State recommended a 25-year prison sentence; thus, defendant received precisely what he bargained for. Defendant's mere belief or hope he would receive a shorter sentence by pleading guilty does not permit him to withdraw his plea when that expectation is unfulfilled. See *People v. Fern*, 240 Ill. App. 3d 1031, 1042, 607 N.E.2d 951, 961 (1993). Defendant's case of buyer's remorse is no basis for allowing him to withdraw his plea of guilty. See *Cunningham*, 286 Ill. App. 3d at 350. Accordingly, we find defendant failed to meet his burden to show he entered his plea of guilty based on a misapprehension of law or fact and the trial court did not abuse its discretion by denying defendant's motion to withdraw his guilty plea. See *Hughes*, 2012 IL 112817, ¶ 32.

¶ 27 III. CONCLUSION

¶ 28 For the foregoing reasons, we affirm the trial court's judgment.

¶ 29 Affirmed.

No. 4-21-0192

Cite as:	*People v. Millsap*, 2022 IL App (4th) 210192
Decision Under Review:	Appeal from the Circuit Court of Livingston County, No. 17-CF-47; the Hon. Jennifer H. Bauknecht, Judge, presiding.
Attorneys for Appellant:	James E. Chadd, Catherine K. Hart, and Gregory G. Peterson, of State Appellate Defender's Office, of Springfield, for appellant.
Attorneys for Appellee:	Randy Yedinak, State's Attorney, of Pontiac (Patrick Delfino, David J. Robinson, and Kim G. Noffke, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.