

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING
AND, IF FILED, DETERMINED

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY

RICHARD PAUL RIEDEL

Appellant,

Appeal No. CRC 11-00036APANO
UCN: 522011AP000036XXXXCR

STATE OF FLORIDA

Appellee.

Opinion filed January 3, 2012.

Appeal from an Order Denying
Motion to Withdraw Plea
entered by the Pinellas County Court
County Judge Susan Bedinghaus

Simone Lennon, Esquire
Attorney for Appellant

Benjamin J. Kanoski, Esquire
Office of the State Attorney
Attorney for Appellee

ORDER AND OPINION

PETERS, Judge.

THIS MATTER is before the Court on Appellant, Richard Paul Riedel's appeal from an Order Denying a Motion to Withdraw Plea. After review of the record and the briefs, this Court affirms the trial court's denial of the motion.

Factual Background and Trial Court Proceedings

The Appellant, Richard Paul Riedel, was charged by Misdemeanor Information with Trespass in violation of Florida Statute § 810.08 (2) (a). On May 16, 2011, while represented by counsel, Mr. Riedel entered a plea of guilty and signed a written waiver of rights form. A plea colloquy was conducted by the trial court and sentence was imposed. During the colloquy the following exchange occurred between the court and Mr. Riedel:

THE COURT: Anybody forcing you to do this?

MR. RIEDEL: No.

THE COURT: Are you under the influence of alcohol, drugs, or any kind of medication?

MR. RIEDEL: No.

THE COURT: Any history of mental illness.

MR. RIEDEL: Yes.

THE COURT: Do you require meds for it?

MR. RIEDEL: Yes.

THE COURT: Are you getting them?

MR. RIEDEL: Not right now. I'm off of my Seroquel. I had a seizure.

THE COURT: Okay. Are you understanding what's going on right now?

MR. RIEDEL: Yes.

THE COURT: Have you been able to talk to your lawyer and understand her?

MR. RIEDEL: Yes.

THE COURT: Are you satisfied with her representation?

MR. RIEDEL: Yes.

THE COURT: All right. Do you have any questions?

MR. RIEDEL: How long would a trial -- a trial would be she said back in June or July right?

THE COURT: Right now we are setting trials -- right, the earliest date would probably be the last week of June.

MR. RIEDEL: Okay.

THE COURT: Any other questions?

MR. RIEDEL: No.

THE COURT: All right. Do you still want to go forward with your plea?

MR. RIEDEL: Yeah.

THE COURT: All right. I will accept your plea as knowingly, intelligently and voluntarily entered. ...

On June 14, 2011 Mr. Riedel moved to withdraw his plea asserting that at the time of the plea he was under "great mental stress" and further "that he feels as though he

may not been competent at the time of his plea.” On June 16, 2011 a hearing was held on the motion. The following exchange took place:

ATTORNEY: And Judge, he’s here on a motion to withdraw a plea. Today’s the 30th day. It’s the last opportunity to withdraw the plea. I’ve spoken to him. He’s indicated to me that he didn’t believe the plea was voluntary at that time.

THE COURT: Why’s that?

ATTORNEY: He’s -- based on the mental stress, he said, of the bond amount and he did have some -- he missed a couple mental health appointments while he was in jail.

ATTORNEY: And additionally, Judge, he had missed those appointments and he indicated to me he thinks he may not have been competent at the time of his plea.

THE COURT: All right. Anything else you want to add?

ATTORNEY: Would you allow him to address the Court, Judge?

THE COURT: If he wants me to hear it.

ATTORNEY: Do you want to address the Court? Do you have anything you want to say?

MR. RIEDEL: I just haven’t been able to get back into Suncoast. I was in jail; I had two appointments at the time. Trying to get back on medication because I was on Seroquel for like five years. I had a bad seizure in ’09 and I haven’t been able to get -- I want to get back on medication, but some medications are very dangerous, so I’m going to try to -- I’ve been trying to get back into Suncoast. But at the time I was in jail, I haven’t been able to get back into Suncoast yet.

THE COURT: So, you haven’t been back in there yet? Okay. Are you back on any kind of meds now?

MR. RIEDEL: No.

THE COURT: Okay. Are you competent today?

MR. RIEDEL: Well, I don’t feel I’m competent until I can get into see a doctor to find out what’s going on with me.

THE COURT: Okay. I’m going to deny the motion. I remember; I have an independent recollection of taking this plea. I haven’t been presented with any information to believe that he was incompetent at the time or it wasn’t voluntary, so that’s denied.

Mr. Riedel’s Motion to Withdraw Plea was denied. This appeal was timely filed.

The Issue

Appellant argues the trial erred in denying his Motion to Withdraw Plea.

Standard of Review

The issue presented in this appeal is subject to an abuse of discretion standard of review. *Hunt v. State*, 613 So.2d 893, 896 -897 (Fla. 1992); *Porter v. State*, 564 So2d 1060, 1063 (Fla. 1990); *Stokes v. State*, 938 So2d 644 (Fla. 2nd DCA 2006). “Under the abuse of discretion standard, ‘[d]iscretion is abused only ‘when the judicial action is arbitrary, fanciful, or unreasonable, which is another way of saying that discretion is abused only where no reasonable [person] would take the view adopted by the trial court.’” *Frances v. State*, 970 So.2d 806, 813 (Fla. 2007).

Withdrawal of a Plea after Sentencing

“Withdrawal of a guilty plea is not a matter of right but of discretion and will not be set aside absent a showing of abuse. *Meaton v. United States*, 328 F.2d 379 (5th Cir. 1964), cert. denied 380 U.S. 916, 85 S.Ct. 902, 13 L.Ed.2d 801 (1965).” *Adler v. State*, 382 So.2d 1298, 1300 (Fla. 3rd DCA 1980). A defendant who pleads guilty or nolo contendere without expressly reserving the right to appeal a legally dispositive issue may file a motion to withdraw the plea within thirty days after rendition of the sentence, but only upon the grounds specified in Florida Rule of Appellate Procedure 9.140(b)(2)(A)(ii)(a)-(e) except as provided by law. Fla. R. Crim. P. 3.170 (l). Those grounds are:

- the lower tribunal's lack of subject matter jurisdiction;
- violation of the plea agreement, if preserved by a motion to withdraw plea;
- an involuntary plea, if preserved by a motion to withdraw plea;
- a sentencing error, if preserved; or
- as otherwise provided by law.

Fla.R.App.P. 9.140 (b)(2)(A)(ii)(a)-(e). Once sentence has been imposed, to withdraw a plea, a defendant must demonstrate a *manifest injustice* requiring correction. *State v.*

Partlow, 840 So.2d 1040, 1042 (Fla. 2003); *Lopez v. State*, 536 So.2d 226, 229 (Fla.1988). Some examples of such a *manifest injustice* are provided by the American Bar Association Standards of Criminal Justice, Standard 2.1, Pleas of Guilty which provides:

“(ii) Withdrawal is necessary to correct a manifest injustice whenever The defendant proves that:

“(1) he was denied the effective assistance of counsel guaranteed to him by constitution, statute, or rule;

“(2) the plea was not entered or ratified by the defendant or a person authorized to so act in his behalf;

“(3) the plea was involuntary, or was entered without knowledge of the charge or that the sentence actually imposed could be imposed;

“(4) he did not receive the charge or sentence concessions contemplated by the plea agreement and the prosecuting attorney failed to seek or not to oppose these concessions as promised in the plea agreement; or

“(5) he did not receive the charge or sentence concessions contemplated by the plea agreement concurred in by the court, and he did not affirm the plea after being advised that the court no longer concurred and being called upon to either affirm or withdraw his plea.

Williams v. State, 316 So.2d 267, 273 -274 (Fla. 1975) (the court stated its agreement with Standard 2.1).

The Present Case

In the present case Mr. Riedel’s signed waiver of rights form and sworn statements to the court during the plea colloquy establish that he understood the plea and the proceedings. The trial court specifically questioned Mr. Riedel regarding whether he was under the influence of alcohol, drugs, or any kind of medication, his history of mental illness, his medications, whether he was “understanding what’s going on right now,” whether he had been able to talk to his lawyer and understand her, whether he was

satisfied with her representation, the court answered a question posed by Mr. Riedel and finally asked Mr. Riedel if he still wanted to go forward with his plea. Mr. Riedel answered the last question in the affirmative. Furthermore he provided responsive and appropriate answers to each of the court's questions. The trial court had the opportunity to observe and interact with Mr. Riedel, to hear his answers and as a result made the specific finding that Mr. Riedel's plea was knowingly, intelligently and voluntarily entered. There is nothing in the record to establish any abuse of discretion.

At the hearing on Mr. Riedel's Motion to Withdraw Plea no evidence was presented and there certainly was nothing presented to establish a *manifest injustice* or any abuse of discretion. There was no error by the trial court; the Motion to Withdraw Plea was properly denied.

Conclusion

This Court finds no error by the trial court. The Motion to Withdraw Plea was properly denied; the judgment and sentence of the trial court were lawfully entered and should be affirmed.

IT IS THEREFORE ORDERED that the judgment and sentence of the trial court is affirmed.

ORDERED at Clearwater, Florida this 3rd day of January, 2012.

Original order entered on January 3, 2012, by Circuit Judges Raymond O. Gross, L. Keith Meyer, Jr., and R. Timothy Peters.

cc: Honorable Susan Bedinghaus
Simone Lennon, Esquire
Office of the State Attorney