

Case Summary

Jason Clay Baldauf appeals the denial of his Motion to Withdraw Plea on the following convictions: Criminal Confinement, a Class D felony,¹ Intimidation Committed while Armed with a Deadly Weapon, a Class C felony,² Domestic Battery, a Class A misdemeanor,³ Neglect of a Dependant, a Class D felony,⁴ and two counts of Criminal Recklessness, both Class D felonies.⁵ We affirm in part, and reverse in part.

Issues

Baldauf raises three issues on appeal, which we consolidate and restate as follows:

- 1) Whether the trial court abused its discretion by denying Baldauf's Motion to Withdraw Plea, and
- 2) Whether the trial court abused its discretion in imposing a \$400 public defender fee without considering Baldauf's ability to pay.

Facts and Procedural History

On the evening of May 1, 2005, Baldauf was in an apartment with his girlfriend Brandy Medley, Baldauf's four-year-old son N.B., Medley's six-year-old son W.E., and her two-year-old nephew. An argument arose, during which Baldauf repeatedly hit Medley and held her in a corner of the room. On occasion, W.E. would enter, and Baldauf would convince him to leave the room. Baldauf acknowledged that a knife was "involved" during these events, and that he had been drinking. The next day, the State charged Baldauf with seven counts – Criminal Confinement, a Class B felony, two counts of Intimidation

¹ Ind. Code § 35-42-3-3(a).

² I.C. § 35-45-2-1(b)(2).

³ I.C. § 35-42-2-1.3(a).

⁴ I.C. § 35-46-1-4(a).

Committed while Armed with a Deadly Weapon, both Class C felonies, Battery Committed by means of a Deadly Weapon, a Class C felony,⁶ Neglect of a Dependent, a Class D felony, and two counts of Criminal Recklessness, both Class D felonies.

On July 13, 2005, the State amended the fourth count from a Class C felony to Domestic Battery, a Class A misdemeanor. The next day, with potential jurors waiting nearby for voir dire, the parties discussed the terms of a plea agreement. When the State noted that the plea was not in writing, the judge responded that the court reporter would make the transcript available for the sentencing hearing. After going off the record to hear the parties describe the agreement, the trial court went back on the record and recounted the terms. Baldauf pled guilty to Criminal Confinement, lowered to a Class D felony, one count of Intimidation while Armed with a Deadly Weapon, as charged, Domestic Battery, as charged in the amended Information, and the other three Class D felonies, as charged. The State dismissed one of the counts of Intimidation. The trial court advised Baldauf of his rights, and found that his plea was voluntary. In so doing, the trial court had the State read the definitions of all six counts, including the range of penalties for each. Baldauf testified that he understood the definitions and that he was admitting to committing those crimes by pleading guilty. The trial court issued a written order, directing the State to file a written plea agreement and directing the court reporter to prepare a transcript of the hearing.

On September 2, 2005, Baldauf moved orally to withdraw his plea. The trial court denied his motion, having reviewed the transcript of the prior hearing and finding that the

⁵ I.C. § 35-42-2-2.

⁶ I.C. § 35-42-2-1(a)(3).

transcript was sufficient written record of the plea agreement. Baldauf later filed a written motion to withdraw his guilty plea, arguing that the State had not submitted a written plea agreement. The trial court heard argument and again denied his motion, noting that Baldauf had the transcript of the plea hearing, and that the transcript would be used for purposes of the sentencing hearing. On June 22, 2006, Baldauf once more moved to withdraw his guilty plea, noting that he had “had time to reflect” on his guilty plea and that he had changed his mind. Baldauf sought to present evidence. The trial court indicated it would consider only the transcript of the plea hearing. Baldauf then asked to make an offer of proof, which the trial court denied. The trial court declined to alter its prior rulings, and proceeded with the sentencing hearing.

The trial court accepted the plea agreement and entered judgments of conviction consistent with that agreement. The trial court found three aggravating circumstances, no mitigating circumstances, and found that the aggravating circumstances outweighed the mitigating circumstances. The trial court imposed the maximum sentence for all six convictions, ordering that all of the sentences run concurrently to the eight-year, Class C felony conviction of Intimidation Committed while Armed with a Deadly Weapon. The trial court ordered Baldauf to execute six of the eight years, suspending two years during which Baldauf would be on supervised probation and home detention. Finally, the trial court found Baldauf to be indigent and ordered him to pay the costs of the action, \$400, based upon Baldauf’s requiring multiple attorneys and the fact that the plea agreement was reached the day the case was scheduled for jury trial.

Baldauf now appeals.

Discussion and Decision

I. Denial of Motion to Withdraw Guilty Plea

On appeal, Baldauf argues that the trial court abused its discretion by denying his Motion to Withdraw Plea. After the defendant has pled guilty, but before sentencing, the trial court shall allow the defendant to withdraw his plea “whenever the defendant proves that withdrawal of the plea is necessary to correct a manifest injustice.” Ind. Code § 35-35-1-4(b). We review the trial court’s decision for an abuse of discretion. Id. On appeal from a motion to withdraw a guilty plea, there is a “presumption in favor of the ruling.” Brightman v. State, 758 N.E.2d 41, 44 (Ind. 2001) (quoting Coomer v. State, 652 N.E.2d 60, 62 (Ind. 1995)). We will not disturb the trial court’s ruling where it was based on conflicting evidence. Turner v. State, 843 N.E.2d 937, 941 (Ind. Ct. App. 2006), reh’g denied.

Here, Baldauf admitted to the crimes, and testified that he fought with Medley, hit her repeatedly, and confined her in a corner. He did so in the presence of three children, his son, Medley’s son, and her nephew. Medley’s son, age six, attempted to intervene. During the plea hearing, Baldauf acknowledged that a knife was involved and that he had been drinking. The trial court found that Baldauf’s plea was made voluntarily.

In conjunction with his Motion to Withdraw Plea, Baldauf sought to introduce evidence to establish that he did not possess a knife during the incident. He now argues that the trial court’s refusal to allow an offer of proof on this matter was reversible error. In support, Baldauf cites Nelson v. State, 792 N.E.2d 588, 595 (Ind. Ct. App. 2003), trans.

denied, in which this Court held that a party has a right to make an offer of proof. However, the evidence, even if admitted, would have been in conflict with his testimony taken during the plea hearing in which he admitted to the crimes and to the fact that a knife was involved. The Nelson Court based its holding on the fact that appellate review of an evidentiary matter would not be practicable absent an offer of proof. Id. In contrast, given Baldauf's description of what he sought to establish in offering the evidence, we are not restrained from reviewing the trial court's legal conclusion on this point.

Finally, Baldauf argues that the trial court refused to conduct a hearing on his motion. To the contrary, the trial court conducted three hearings on his motions. Baldauf's argument fails to suggest manifest injustice, and is based upon purported evidence in conflict with other evidence considered by the trial court. We conclude that the trial court did not abuse its discretion in denying Baldauf's multiple Motions to Withdraw Plea.

II. Order to Pay Public Defender

Baldauf argues, and the State acknowledges, that the trial court should have considered Baldauf's ability to pay before ordering him to pay \$400 to the public defender's office. I.C. § 33-40-3-7(b). In light of the parties' agreement, we reverse imposition of the \$400 fee.

Conclusion

The trial court's denial of the motions to withdraw plea did not constitute an abuse of discretion where Baldauf failed to establish a manifest injustice. However, the court was first required to determine Baldauf's ability to pay before ordering the payment of \$400.

Affirmed in part, reversed in part.

VAIDIK, J., and BARNES, J., concur.