

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

RASHAD TAYLOR,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D2023-2619

January 3, 2025

Appeal from the Circuit Court for Hillsborough County; Robin F. Fuson,
Judge.

Blair Allen, Public Defender, and Pamela H. Izakowitz, Assistant Public
Defender, Bartow, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Lara E. Breslow,
Assistant Attorney General, Tampa, for Appellee.

PER CURIAM.

Affirmed.

BLACK, SMITH, and LABRIT, JJ., Concur.

Opinion subject to revision prior to official publication.

Appendix  A

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
FOR HILLSBOROUGH COUNTY, FLORIDA
Criminal Justice and Trial Division**

STATE OF FLORIDA

CASE NO: 06-CF-006621-C

v.

**RASHAD TAYLOR,
Defendant.**

DIVISION: G

ORDER DENYING DEFENDANT'S MOTION TO WITHDRAW PLEA

THIS MATTER is before the Court upon Defendant's "Motion to Withdraw Plea," filed on October 26, 2023, and Defendant's "Amended Motion to Withdraw Plea," filed on November 3, 2023, both pursuant to Florida Rule of Criminal Procedure 3.170(l). After reviewing the motions, the court file, and the record, the Court finds as follows:

On August 13, 2007, Defendant pled guilty to murder in the first degree (count one), and attempted robbery with a firearm (count two). (See Plea Form, attached). Defendant was sentenced on count one to life imprisonment, and on count two to 30 years' incarceration with a 20-year minimum mandatory term. Following a successful postconviction motion, the Court resentenced Defendant on count one to life imprisonment with a sentence review hearing after 25 years in accordance with sections 775.082(1)(b)1., 921.1401, 921.1402(2)(a), Florida Statutes. (See Judgment and Sentence, attached; October 17, 2017, Amended Judgment and Sentence, attached; Sentencing Order, attached.)

On April 25, 2022, Defendant filed a Motion to Correct Illegal Sentence challenging his sentence on count two, which the Court granted in part. On October 25, 2023, the Court resentenced Defendant to 20 years' incarceration with a 20-year minimum mandatory term pursuant to section 775.087(2)(a)2., Florida Statutes. (See October 26, 2023, Amended Judgment and Sentence, attached.)

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In his motions, Defendant seeks to withdraw the plea entered as to count two in 2007.¹ He raises five grounds on which he contends the Court should allow him to withdraw his plea. (See Defendant's Motion to Withdraw Plea, attached; Defendant's Amended Motion to Withdraw Plea, attached.) Pursuant to Florida Rule of Appellate Procedure 9.140(b)(2)(A)(ii)(a)–(e) and Florida Rule of Criminal Procedure 3.170(l), “a defendant may withdraw a plea within thirty (30) days after the rendition of the sentence, but only upon the following grounds: (a) the lower tribunal's lack of subject matter jurisdiction; (b) a violation of the plea agreement, if preserved by a motion to withdraw plea; (c) an involuntary plea, if preserved by a motion to withdraw plea; (d) a sentencing error, if preserved; or (e) as otherwise provided by law.” *Woodly v. State*, 937 So. 2d 193, 196 (Fla. 4th DCA 2006). A defendant seeking to withdraw a plea after sentencing must show a manifest injustice requiring correction. See *Flemming v. State*, 204 So. 3d 950, 951 (Fla. 1st DCA 2016). “Examples of situations where withdrawal is necessary to correct a manifest injustice include cases where the defendant proves that he received ineffective assistance of counsel or where the defendant's plea was involuntary.” *Nelfrard v. State*, 34 So. 3d 221, 222 (Fla. 4th DCA 2010) (citing *Williams v. State*, 316 So. 2d 267, 274 (Fla. 1975)).

When ruling on a motion to withdraw plea, a court may summarily deny a legally insufficient motion or a legally sufficient motion which is conclusively refuted by the record. See, e.g., *Jones v. State*, 885 So. 2d 449, 452 (Fla. 1st DCA 2004). “Because the defendant bears the burden of proof, when a defendant files a facially sufficient motion to withdraw a plea, the trial court must either afford the defendant an evidentiary hearing or accept the defendant's allegations in the motion as true except to the extent that they are conclusively refuted by the record.” *Sheppard v. State*, 17 So. 3d 275, 283 (Fla. 2009) (quoting *Iaconetti v. State*, 869 So.2d 695, 699 (Fla. 2d DCA 2004)). “When determining

¹ He does not challenge his plea on count one; in any event, such a challenge would be untimely.

‘whether an allegation is conclusively refuted by the record, [a trial court] may rely on the sworn testimony the defendant has given in the plea colloquy. Any allegations that contradict those answers should not be entertained.’” *Johnson v. State*, 22 So. 3d 840, 844 (Fla. 1st DCA 2009) (citation omitted).

As an initial matter, the Court addresses the timeliness of Defendant’s motion. Defendant contends that his motion is timely filed pursuant to Rule 3.170(I) because it is filed within 30 days of his resentencing on count two, citing *Scott v. State*, 331 So. 3d 297 (Fla. 2d DCA 2021), and *Chipman v. State*, 285 So. 3d 1005 (Fla. 2d DCA 2019). Those precedents appear to require this Court to consider Defendant’s motion because it was filed within 30 days of resentencing, despite the fact that Defendant entered his plea over 17 years ago. Therefore, the Court considers the motion on the merits.

Issue One: Involuntary plea based on trial court’s misstatement of the statutory maximum

In this claim, Defendant contends that his plea was involuntary because the Court misinformed him of the applicable statutory minimums and maximums for his charge of attempted robbery with a firearm. He alleges that the Court advised him that the maximum sentence was 30 years in prison, and that the applicable minimum sentence was 20 years. He contends that Court’s statements about the applicable sentences for count two were incorrect because the applicable minimum sentence was 10 years and the applicable maximum was 15 years. He contends that this misadvice rendered his plea to count two involuntary.

Defendant’s claim is legally insufficient because he fails to demonstrate a manifest injustice. When a defendant seeks to withdraw his plea after sentencing, the defendant must prove that a manifest injustice has occurred. “This is a more stringent standard than a motion to withdraw a plea filed before sentencing, as the burden falls on the defendant to prove that withdrawal is necessary to correct the manifest injustice.” *Nelfard*, 34 So. 3d at 222 (Fla. 4th DCA 2010). Examples of

situations where withdrawal is necessary to correct a manifest injustice include cases where the defendant proves that he received ineffective assistance of counsel, or where the defendant's plea was involuntary "or was entered without knowledge of the charge or that the sentence actually imposed could be imposed." *Williams v. State*, 316 So. 2d 267, 274 (Fla. 1975). Necessarily, the concept of a manifest injustice requiring correction implies that there is an injustice to correct; a defendant cannot claim that an error which accrued to his benefit is a "manifest injustice requiring correction."

At the change of plea and sentencing on August 13, 2007, the Court stated that count two was a first-degree felony carrying a maximum sentence of 30 years in prison and a mandatory minimum sentence of 20 years. (See August 13, 2007, Change of Plea and Sentencing Transcript at 2-3, attached.) Defendant alleges that count two was a second-degree felony carrying maximum and minimum sentences of 15 years and ten years, respectively. (See Defendant's Motion to Withdraw Plea, at 9, attached.) Neither is entirely correct.

In charging Defendant with attempted robbery, the State alleged that "in the course of [the] attempted robbery, the said RASHAD J. TAYLOR, carried a firearm and did discharge said firearm, and as a result of the discharge, death was inflicted upon [the victim]," invoking section 775.087(2), Florida Statutes. (Indictment, count two, attached.) That language subjected Defendant to "a minimum term of not less than 25 years and not more than a term of life imprisonment," which superseded the ordinary 15-year maximum for a second-degree felony. See §§ 775.087(2)(a)3., 2(c), Fla. Stat. (2006); *Terminus v. State*, 86 So. 3d 1179 (Fla. 5th DCA 2012).

Thus Defendant is incorrect that the applicable maximum and minimum sentences were 15 years and ten years, respectively. Moreover, the Court understated Defendant's exposure by describing only the mandatory minimum term resulting from the plea agreement. Had Defendant proceeded to trial and been found guilty, he could have received a mandatory life sentence and would have received at least a 25-year mandatory minimum term, which would exceed the sentence he

ultimately received of 20 years with a 20-year minimum term.² Because Defendant was aware he could receive a 20-year mandatory minimum term, and because he received that sentence, he has failed to demonstrate a manifest injustice requiring correction. Additionally, Defendant cannot demonstrate a manifest injustice because he is serving a concurrent sentence of life imprisonment on count one, which he does not challenge, and his sentence on count two will expire before he becomes eligible for sentence review on count one. Defendant is not entitled to withdraw his plea for this reason.

Issue Two: Trial court erred by denying Defendant's pre-resentencing motion to withdraw plea

In this claim, Defendant asserts that the "trial court reversibly erred on March 28, 2023, by orally denying the Defendant's motion to withdraw plea." He claims that he was entitled to withdraw his plea because the sentence on count two imposed in 2007 was illegal, citing *Williams v. State*, 934 So. 2d 632 (Fla. 5th DCA 2006).

The fact that the Court has previously not allowed a defendant to withdraw his plea is not a ground for seeking withdrawal of a plea after sentencing. *See* Fla. R. App. P. 9.140(b)(2)(A)(ii)(a)–(e). To the extent Defendant asks the Court to reconsider its prior order denying his pre-resentencing motion to withdraw plea, the Court declines to reconsider it. Moreover, as the Court previously noted and explains again here, a "motion which seeks, as its remedy, the withdrawal of a negotiated plea is not cognizable under Rule 3.800 but must be brought in a timely manner pursuant to Rule 3.850." *Holmes v. State*, 100 So. 3d 281, 283 (Fla. 3d DCA 2012). *Williams*, cited by Defendant, dealt with a rule 3.850 motion, and so is consistent with *Holmes*. The Court's prior ruling is therefore not incorrect. Defendant is not entitled to withdraw his plea for this reason.

² Defendant alleges that he would have insisted on going to trial had he known his exposure was only 15 years. But he cannot claim that, having pled guilty believing his exposure to be 30 years, he would have insisted on going to trial had he known that his exposure at trial was *greater* than he was informed.

Issue Three: Trial court committed sentencing error by not requiring a PSI

In this claim, Defendant asserts that the Court committed sentencing error by resentencing Defendant on count two without “ordering and considering a mandatory Presentence Investigation Report (PSI), a right that was never waived.” He argues that, because he is a juvenile offender and a first-time felony offender, Rule 3.710 required the Court to order and consider a PSI because the Court “had sentencing discretion of ten to fifteen years, see § 775.084(4)(b)(2), Fla. Stat. (1993), and probation was not ordered.” He contends that the Court’s failure to order and consider a PSI entitles him to withdraw his plea.

An alleged sentencing error is not a ground for seeking withdrawal of a plea after sentencing. *See* Fla. R. App. P. 9.140(b)(2)(A)(ii)(a)–(e). Additionally, the Court recently addressed the issue of whether the failure to order a PSI was error requiring resentencing, and concluded it was not because Defendant did not qualify for a mandatory PSI. (*See* Order Denying Defendant’s Motion to Correct Sentence, attached.) Defendant is not entitled to withdraw his plea for this reason.

Issue Four: Trial court erred by accepting Defendant’s plea without a scoresheet

In this claim, Defendant asserts that the Court committed “fundamental” error by “accepting the defendants plea without first ordering and considering a criminal punishment code scoresheet on count two.” He alleges that this rendered his plea unknowing and involuntary because without the scoresheet, he did not know “all the direct consequences of his plea, including those that affect the range of punishment.” He contends that the Court’s failure to consider a scoresheet at the time of his sentencing entitles him to withdraw his plea.

The failure to consider a scoresheet at sentencing is an error in the sentencing process. *See, e.g., Fernandez v. State*, 199 So. 3d 500, 502–03 (Fla. 2d DCA 2016). An alleged sentencing error is not a ground for seeking withdrawal of a plea after sentencing. *See* Fla. R. App. P.

9.140(b)(2)(A)(ii)(a)–(e). And even if the absence of a scoresheet could be used to demonstrate that a plea was involuntary, Defendant cannot make that showing in this case because he was subject to minimum mandatory terms (described in Issue One, *supra*) that would take precedence over the lowest possible sentence on his scoresheet. Defendant was aware of those minimum terms, as described in Issue One, *supra*, so he cannot claim that the absence of a scoresheet rendered his plea involuntary. Defendant is not entitled to withdraw his plea for this reason.

Issue Five: Involuntary plea based on counsel's misadvice regarding the statutory maximum

In this claim, Defendant contends that his plea was involuntary because counsel misinformed him about the applicable statutory minimums and maximums for his charge of attempted robbery with a firearm. He alleges that counsel advised him that the maximum sentence was 30 years in prison, and that the applicable minimum sentence was 20 years. He contends that counsel's statements about the applicable sentences for count two were incorrect because the applicable minimum sentence was 10 years and the applicable maximum was 15 years. He contends that this misadvice rendered his plea to count two involuntary.

A defendant's entry of a plea based upon his attorney's mistaken advice about sentencing can be a basis for allowing a defendant to withdraw the plea. *Snodgrass v. State*, 837 So. 2d 507, 508 (Fla. 4th DCA 2003). However, for the same reasons articulated in Issue One, *supra*, Defendant cannot demonstrate a manifest injustice requiring correction. Defendant's exposure, had he proceeded to trial and been found guilty, would have ranged from a 25-year mandatory minimum term up to life imprisonment. His plea bargain allowed for a reduced sentence of 30 years with a 20-year minimum term, which the Court ultimately reduced to 20 years with a 20-year minimum term. Because Defendant was aware he could receive at least a 20-year mandatory minimum term, and because he received that sentence, he has failed to demonstrate a manifest injustice requiring correction.

Additionally, he cannot demonstrate a manifest injustice because he is serving a concurrent sentence of life imprisonment on count one, which he does not challenge. Defendant is not entitled to withdraw his plea for this reason.

It is therefore **ORDERED AND ADJUDGED** that Defendant's "Motion to Withdraw Plea" and "Amended Motion to Withdraw Plea" are hereby **DENIED** in accordance with the above order.

DONE AND ORDERED in Chambers, in Hillsborough County, Florida.

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06-CF-006621-C 11/22/2023 1:27:31 PM

ROBIN F. FUSON, Circuit Judge

Attachments:

Plea Form
Judgment and Sentence
October 17, 2017, Amended Judgment and Sentence
Sentencing Order
October 26, 2023, Amended Judgment and Sentence
Defendant's Motion to Withdraw Plea
Defendant's Amended Motion to Withdraw Plea
August 13, 2007, Change of Plea and Sentencing Transcript
Indictment
Order Denying Defendant's Motion to Correct Sentencing Error, without attachments

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**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
FOR HILLSBOROUGH COUNTY, FLORIDA
Criminal Justice and Trial Division**

STATE OF FLORIDA

CASE NO: 06-CF-006621-C

v.

**RASHAD TAYLOR,
Defendant.**

DIVISION: G

ORDER APPOINTING THE PUBLIC DEFENDER FOR APPEAL

THIS MATTER is before the Court on Defendant's pro se "Motions for the Appointment of Appellate Counsel," filed on December 27, 2023, and "Amended Motion for the Appointment of Appellate Counsel," filed on January 8, 2024. After reviewing Defendant's motion, the court file, and the record, the Court finds as follows. In his Motions, Defendant asks the Court to appoint counsel to represent him on appeal. Defendant is currently incarcerated, was previously declared indigent, and had counsel appointed to represent him. Accordingly, it is

ORDERED AND ADJUDGED that the Office of the Public Defender is appointed to represent Defendant on appeal.

DONE AND ORDERED in Chambers, in Hillsborough County, Florida.

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ROBIN F. FUSON, Circuit Judge

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