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NO. COA09-663

NORTH CAROLINA COURT OF APPEALS

Filed: 22 December 2009

STATE OF NORTH CAROLINA

v.

Wake County
No. 07CRS12744

CLIFTON LAVERN BOLTON, II,
Defendant.

Appeal by defendant from judgment entered on or about 3 December 2008 by Judge J.B. Allen, Jr., in Superior Court, Wake County. Heard in the Court of Appeals 14 December 2009.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Creecy C. Johnson, for the State.

Betsy J. Wolfenden, for defendant-appellant.

STROUD, Judge.

Defendant Clifton Bolton appeals from a judgment entered after he pled guilty to trafficking in cocaine by possession. Defendant contends that the trial court erred when it denied his motion to withdraw his guilty plea. We affirm the trial court.

On 5 July 2007, defendant pled guilty to trafficking in cocaine and admitted a probation violation. In exchange for defendant's plea, the State agreed to dismiss charges of maintaining a dwelling to keep controlled substances, driving while license revoked, and speeding. As a condition of the plea agreement, the State prayed that judgment be continued. At the

plea hearing, defendant stated that he understood the nature of the charges against him, the maximum punishment he faced, the terms of his plea agreement, stipulated to the State's factual basis to support the plea, and affirmed that he was in fact guilty.

On 13 August 2008, defendant, represented by a new attorney, filed a "Motion to Amend Plea" in superior court. Defendant contended that at the time he pled guilty, he did not understand the nature and consequences of his guilty plea and believed that he was eligible to be placed on probation and in a drug treatment program rather than serve an active prison term. Defendant also stated that he had told his attorney that he did not want to render substantial assistance to police.

The trial court heard defendant's motion to withdraw his guilty plea on 3 December 2008. Defendant testified that, prior to his guilty plea, his trial attorney informed him that the trafficking charge carried a mandatory term of 35 to 42 months imprisonment, and that he could only avoid the active prison term by providing substantial assistance to police. Defendant testified that he refused to provide substantial assistance, but still decided to enter the plea because he believed that the judge could elect to impose probation rather than active prison time.

After hearing the testimony from defendant, the trial court entered an oral order denying defendant's motion to withdraw his guilty plea. The trial court found that defendant testified that his lawyer advised him of the active prison term he faced and that the only way he could avoid the mandatory term was by providing

substantial assistance to police, that defendant acknowledged his guilt during his plea colloquy, and that defendant's claim that he did not understand the nature and consequences of his plea was not credible. The trial court then entered judgment on defendant's conviction, and imposed the mandatory term of 35 to 42 months imprisonment. Defendant appeals.

Defendant's sole argument on appeal is that the trial court erred when it denied his pre-sentencing motion to withdraw his guilty plea. We disagree.

"There is no absolute right to withdraw a plea of guilty, however, a criminal defendant seeking to withdraw such a plea before sentencing is 'generally accorded that right if he can show any fair and just reason.'" *State v. Robinson*, 177 N.C. App. 225, 229, 628 S.E.2d 252, 254 (2006) (quoting *State v. Handy*, 326 N.C. 532, 536, 391 S.E.2d 159, 161 (1990)).

The factors to consider in evaluating whether a defendant has presented a fair and just reason to withdraw his appeal include:

whether the defendant has asserted legal innocence, the strength of the State's proffer of evidence, the length of time between entry of the guilty plea and the desire to change it, and whether the accused has had competent counsel at all relevant times. [. . .] Misunderstanding of the consequences of a guilty plea, hasty entry, confusion, and coercion are also factors for consideration.

Handy, 326 N.C. at 539, 391 S.E.2d at 163 (citation omitted).

"In reviewing a decision of the trial court to deny defendant's motion to withdraw, the appellate court does not apply an abuse of discretion standard, but instead makes an 'independent

review of the record.'" *State v. Marshburn*, 109 N.C. App. 105, 108, 425 S.E.2d 715, 718 (1993) (quoting *Handy*, 326 N.C. at 539, 391 S.E.2d at 163).

In this case, after weighing the relevant factors, we conclude that the trial court properly denied defendant's motion to withdraw his guilty plea. "This Court has placed heavy reliance on the length of time between a defendant's entry of the guilty plea and motion to withdraw the plea." *Robinson*, 177 N.C. App. at 229, 628 S.E.2d at 255. Here, defendant filed his motion to withdraw the plea more than thirteen months after he pled guilty, a significant period of time. *See State v. Graham*, 122 N.C. App. 635, 471 S.E.2d 100 (1996) (affirmed the trial court's denial of defendant's motion to withdraw his guilty plea when defendant waited five weeks after entering his guilty plea).

Considering the remaining factors, we note that defendant stipulated to the State's factual basis and acknowledged his guilt when he entered his plea, and only asserted his innocence for the first time when he filed the motion to withdraw his plea. Defendant also had competent counsel who negotiated a beneficial plea agreement through which defendant could have avoided the mandatory minimum prison term for trafficking in cocaine by providing substantial assistance to police. Finally, defendant's own testimony that his attorney informed him that he faced a mandatory prison term unless he provided substantial assistance to law enforcement belies his contention that he believed he could

receive a probationary sentence without providing substantial assistance.

In conclusion, we believe that defendant has failed to demonstrate that the trial court erred when it denied his motion to withdraw his guilty plea. Accordingly, we affirm.

Affirmed.

Judges WYNN and CALABRIA concur.

Reported per Rule 30(e).