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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-223

No. COA20-463

Filed 18 May 2021

Pasquotank County, No. 18CRS50020

STATE OF NORTH CAROLINA

v.

WILLIE BROOK

Appeal by defendant from order entered 24 February 2020 by Judge J. Carlton Cole in Pasquotank County Superior Court. Heard in the Court of Appeals 14 April 2021.

Attorney General Joshua H. Stein, by Elizabeth Forrest, Assistant Attorney General, for the State-Appellee.

Appellant Defender Glenn Gerding, by Jillian C. Katz, Assistant Appellate Defender, for Defendant-Appellant.

CARPENTER, Judge.

I. Factual and Procedural Background

¶ 1 On 26 February 2018, Willie Brook ("Defendant") was indicted by a

Pasquotank County Grand Jury for assault inflicting serious bodily injury. The matter came on for trial at the 6 January 2020 Criminal Trial Session of Pasquotank County Superior Court before the Honorable L. Lamont Wiggins. On 6 January 2020, Defendant pleaded guilty pursuant to *Alford v. North Carolina* to assault inflicting serious bodily injury.[1] On 4 February 2020, at the Criminal Trial Session of Pasquotank County Superior Court before the Honorable J. Carlton Cole, a sentencing hearing took place in which Defendant was ordered to pay $25,782.49 in restitution. On 5 February 2020, Defendant appeared again in front of Judge Cole to withdraw his guilty plea. Judge Cole denied Defendant's motion. Defendant entered oral notice of appeal.

II. Jurisdiction

¶ 2 This Court's jurisdiction over Defendant's direct appeal is established as a matter of right by N.C. Gen. Stat. § 15A-1444(e) (2019). *See State v. Dickens*, 299 N.C. 76, 79, 261 S.E.2d 183, 185 (1980) (holding the defendant was entitled to appeal as a matter of right per section 15A-1444(e) when the superior court denied the defendant's post-sentencing motion to withdraw his guilty plea).

III. Issue

[1] In *Alford v. North Carolina,* 400 U.S. 25, 37, 91 S. Ct. 160, 27 L. Ed. 2d 162, 171 (1970), the United States Supreme Court held a defendant may enter a guilty plea containing a protestation of innocence when the defendant intelligently concludes that a guilty plea is in his best interest and the record contains strong evidence of actual guilt.

¶ 3 The sole issue for this Court's review is whether the trial court erred in denying Defendant's motion to withdraw his *Alford* plea.

IV. Standard of Review

¶ 4 Because Defendant's motion to withdraw his plea was made post-sentence, it is properly treated as a motion for appropriate relief. *State v. Handy*, 326 N.C. 532, 536, 391 S.E.2d 159, 161 (1990). When reviewing "a trial court's findings on a motion for appropriate relief, [the] findings are binding if they are supported by competent evidence and may be disturbed only upon a showing of manifest abuse of discretion." *State v. Wilkins*, 131 N.C. App. 220, 223, 506 S.E.2d 274, 276 (1998) (citations omitted). Unchallenged findings of fact are "presumed to be supported by competent evidence and are binding on appeal." *State v. Evans*, 251 N.C. App. 610, 613, 795 S.E.2d 444, 448 (2017) (brackets and citations omitted). "[T]he trial court's conclusions of law are fully reviewable on appeal." *State v. Johnson*, 126 N.C. App. 271, 273, 485 S.E.2d 315, 316 (1997).

V. Analysis

¶ 5 In *State v. Handy*, the Court held there is a "fundamental distinction" between motions to withdraw guilty pleas made pre-sentencing and motions made after sentencing when the defendant is dissatisfied with the sentence imposed. *Handy*, 326 N.C. at 536, 391 S.E.2d at 161. While a pre-sentencing motion to withdraw a guilty plea should be permitted for "any fair and just reason," when a defendant seeks

to withdraw a guilty plea after sentencing, "it should be granted only to avoid manifest injustice." *Id.* at 536, 391 S.E.2d at 161. "Factors to be considered in determining the existence of manifest injustice include whether: Defendant was represented by competent counsel; Defendant is asserting innocence; and Defendant's plea was made knowingly and voluntarily or was the result of misunderstanding, haste, coercion, or confusion." *State v. Russell*, 153 N.C. App. 508, 509, 570 S.E.2d 245, 247 (2002).

¶ 6 Defendant contends it was a manifest injustice for the trial court to deny Defendant's motion to withdraw his guilty plea because: (1) it was not knowingly, intelligently, and voluntarily entered; (2) Defendant asserted actual innocence; and, (3) it was made only one day after the restitution and sentencing hearing.

¶ 7 In the first prong of his argument, Defendant contends his plea was not knowing, intelligent, and voluntary because it was entered under Defendant's alleged misconception as to the amount of money involved in restitution. "A plea is voluntary and knowing if it is made by someone fully aware of the direct consequences of the plea." *State v. Wilkins*, 131 N.C. App 220, 224, 506 S.E.2d 274, 277 (1998) (citations omitted). Moreover, "[i]n cases where there is evidence that a defendant signs a plea transcript and the trial court makes a careful inquiry of the defendant regarding the plea, this has been held to be sufficient to demonstrate that the plea was entered into freely, understandingly, and voluntarily." *Id.* at 224, 506 S.E.2d at 277 (citations

omitted); s*ee also State v. Konakh*, 266 N.C. App. 551, 557, 831 S.E.2d 865, 869 (2019) (holding a plea is entered into knowingly and voluntarily when a trial court makes a careful inquiry of the defendant regarding his decision to plead and the defendant executes a transcript of plea form).

¶ 8 Here, it is not disputed the trial court made a careful inquiry of Defendant regarding his decision to plead. A lengthy colloquy occurred between Defendant and the trial court prior to Defendant's entry of plea. The trial court found as fact, and the transcript corroborates, Defendant responded in the affirmative to all questions asked of him, including the questions, "[d]o you understand what you are doing here today, and is your mind clear?"; "[have] you and your lawyer discussed the possible defenses, if any, to the charges?"; and "[d]o you now consider it in your best interest to plead guilty to the charges I have just described?"

¶ 9 Defendant also signed a transcript of the plea. The transcript noted: "[a]ny representations hereinabove as to sentencing are recommendations only, it is understood among all parties that ultimate sentencing shall be in discretion of the court." Therefore, Defendant was informed the final amount of restitution would not be set until his restitution hearing. We hold, as we held in *Konakh*, since the trial court made a careful inquiry of Defendant regarding his decision to plead and Defendant executed a transcript of plea form, the plea was entered into knowingly and voluntarily. *See Konakh*, 266 N.C. App. at 557, 831 S.E.2d at 869.

¶ 10 Defendant next contends his assertion of innocence demonstrates the denial of his motion to withdraw his plea is manifestly unjust. Defendant entered an *Alford* plea which does not require admission of guilt. *State v. Salvetti*, 202 N.C. App. 18, 34–35, 687 S.E.2d 698, 709 (2010) (distinguishing a defendant who entered an *Alford* plea from the defendant in *State v. Russell*, 153 N.C. App. 508, 508, 570 S.E.2d 245, 246 (2002), who entered a guilty plea and whose assertion of innocence was worth consideration, because an *Alford* plea does not require admission of guilt). Further, the record does not reflect Defendant asserted actual innocence; at best, the record shows only Defendant had previously filed a notice of self-defense.

¶ 11 Lastly, Defendant argues the "short" time between his entry of plea and motion to withdraw is evidence the denial of his motion to withdraw the plea was manifestly unjust. Defendant cites to *State v. Handy*, which considered the short time between entry of the plea and the motion to withdraw the plea. *Handy*, 326 N.C. at 540, 391 S.E.2d at 163. In *Handy*, the Supreme Court of North Carolina adopted the view a presentence motion to withdraw a plea of guilty should be allowed for any fair and just reason, and the standard for judging the movant's reasons for delay remains low where the motion comes "only a day or so" after the plea was entered. *Id*. at 538–39, 391 S.E.2d at 162–63. *Handy*, however, implicates a different legal standard than the "manifest injustice" standard this Court uses when reviewing a motion for appropriate relief.

¶ 12 When a motion to withdraw a plea is entered prior to sentencing, as it was in *Handy*, this Court allows withdrawal for any "fair and just reason;" when the motion is made post-sentencing, as it was in the case at bar, this Court allows withdrawal only to prevent "manifest injustice." *See id*. at 536, 391 S.E.2d at 161; *see also State v. Suites*, 109 N.C. App. 373, 375, 427 S.E.2d 318, 320 (1993). Further,

> A fundamental distinction exists between situations in which a defendant pleads guilty but changes his mind and seeks to withdraw the plea before sentencing and in which a defendant only attempts to withdraw the guilty plea after he hears and is dissatisfied with the sentence. This distinction creates the need for differing legal standards for adjudicating such motions to withdraw guilty pleas, a distinction recognized by most courts.

Handy, 326 N.C. at 536, 391 S.E.2d at 161.

¶ 13 Defendant would like this Court to consider the fact his motion to withdraw came "the day immediately following entry of the restitution order," but confuses the standard under which we consider the lapse of time between entry and withdrawal. Defendant's plea timeline is as follows: On 6 January 2020, Defendant pleaded guilty pursuant to *Alford*. On 4 February 2020, judgment was entered ordering that Defendant pay $25,782.49 in restitution. On 5 February 2020, Defendant made the motion to withdraw his guilty plea. A day lapsed between the restitution order and Defendant's motion to withdraw. A month had lapsed between the entry of Defendant's plea and his motion to withdraw. The record reflects Defendant made

his request to withdraw not immediately after entry, but rather immediately after he heard and was dissatisfied with the amount he was ordered to pay in restitution. *See Handy*, 326 N.C. at 536, 391 S.E.2d at 161. This Court does not recognize Defendant's dissatisfaction with his restitution sentence as a factor for consideration under the "manifest injustice" standard.

VI. Conclusion

¶ 14 Competent evidence exists in the record to support the trial court's findings of fact and, in turn, conclusion of law. Defendant did not present any argument necessitating the allowance of his motion to withdraw his *Alford* plea. Therefore, we conclude the trial court did not abuse its discretion in denying Defendant's motion to withdraw his plea.

AFFIRMED.

Judge TYSON and Judge COLLINS concur.

Report per Rule 30(e).