

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-1026

Filed 21 October 2026

Cabarrus County, No. 24CR223723-120

STATE OF NORTH CAROLINA

v.

GARY JOHN PLUMMER, II

Appeal by defendant from judgment entered 18 December 2024 by Judge Martin B. McGee in Cabarrus County Superior Court. Heard in the Court of Appeals 13 August 2026.

Attorney General Jeff Jackson, by Chief Deputy Fellow Allyson S. Barkley, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Nicholas C. Woomer-Deters, for defendant-appellant.

ZACHARY, Judge.

Defendant Gary John Plummer, II, appeals from the judgment entered upon his entry of an *Alford*¹ plea to the charges of assault on a female, felonious restraint, and interfering with emergency communications. On appeal, Defendant argues that the trial court erred by denying his post-sentencing motion to withdraw his *Alford*

¹ “A defendant enters into an *Alford* plea when he proclaims he is innocent, but intelligently concludes that his interests require entry of a guilty plea and the record before the judge contains strong evidence of actual guilt.” *State v. Crawford*, 278 N.C. App. 104, 105 n.1, 861 S.E.2d 18, 21 n.1 (2021) (extraneity omitted), *disc. review denied*, 382 N.C. 728, 879 S.E.2d 582 (2022); *see also North Carolina v. Alford*, 400 U.S. 25, 37, 27 L. Ed. 2d 162, 171 (1970).

plea. After careful review, we affirm the court's decision but remand for the limited purpose of correcting a clerical error in the judgment.

I. Background

On 6 July 2022, Defendant was charged with assault on a female. The complainant was his girlfriend, Sara Smith.² Defendant was subsequently charged with resisting, delaying, or obstructing a police officer and assault on a law enforcement officer, following an altercation with Defendant during officers' service of the arrest warrant for the previous charge. The State dismissed the charge of assault on a female but not the later charges. Defendant was convicted of resisting, delaying, or obstructing a police officer and assault on a law enforcement officer in Cabarrus County District Court and then appealed to Superior Court. As a condition of his release pending appeal, Defendant was ordered to have no contact with Ms. Smith.

On 5 November 2022, Defendant was arrested and charged with assault on a female and assault by strangulation of Ms. Smith. Again, the court ordered Defendant to have no contact with Ms. Smith pending trial. On 1 February 2024, Defendant was arrested and charged with assault on a female, kidnapping, and interfering with emergency communications; again, the victim was Ms. Smith.

Due to Defendant's "violation of multiple court orders" prohibiting him from

² We have adopted a pseudonym to protect the victim's identity.

having contact with Ms. Smith, on 16 December 2024, the State filed a motion to modify the conditions of Defendant's release, requesting that the court "revoke . . . [D]efendant's bond, forfeit any bond previously posted, and institute" a secured \$100,000.00 bond. That same day, the State extended a plea offer to Defendant.

Two days later, on 18 December 2024, Defendant entered an *Alford* plea to the charges of assault on a female, felonious restraint, and interfering with emergency communications. In exchange for Defendant's plea, the State dismissed all other pending charges and stipulated to a suspended sentence.

During the plea hearing, the trial court thoroughly reviewed the Transcript of Plea, which Defendant had signed, with Defendant:

THE COURT: Other than the plea arrangement between you and the prosecutor, has anyone promised you anything or threatened you in any way to cause you to enter this plea against your wishes?

DEFENDANT: Revoke my bond.

THE COURT: Okay. Well, I understand they talked about that being a possibility. But ha[ve] any of those promises or threats caused you [to] enter[] this plea against your wishes?

DEFENDANT: Truthfully? No.

THE COURT: All right. Do you need to talk to your lawyer about that? Because I'm asking the question, . . . you need to be clear with me what you want to do. So this needs to be your own free will. This is your choice as to what you decided you wanted to do given all of the options that are in front of you, all the positives and all the negatives. I'm go[ing to] ask you one more time. If you need time to think

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about it, talk to [your] lawyer then I'll give you an opportunity to do that.

(Discussion at defense table.)

THE COURT: All right. Sir, you've had an opportunity to talk with your lawyer. I'm going to go through this with you again.

Other than the plea arrangement between you and [the] prosecutor, has anyone promised you anything or threatened you in any way to cause you to enter this plea against your wishes?

DEFENDANT: No.

THE COURT: Do you enter this plea of your own free will, fully understanding what you're doing?

DEFENDANT: Yes.

The prosecutor then summarized the factual basis for the charges against Defendant; Defendant lodged no objection. The trial court accepted Defendant's *Alford* plea and sentenced him to 16 to 29 months' imprisonment in the custody of the North Carolina Department of Adult Correction. In accordance with the plea arrangement, the court suspended Defendant's sentence and placed him on 18 months of supervised probation.

The following day, Defendant made an oral motion to withdraw his *Alford* plea. The trial court heard the arguments of counsel and denied Defendant's motion, reasoning:

I've considered all of the information before the [c]ourt, I've touched on some of the factors that we've discussed, and

that is, [D]efendant entered an *Alford* plea, so he does not plead factually guilty but entered into an *Alford* plea, stipulated that there was a factual basis for the [c]ourt to accept the plea. The [c]ourt considered the State's proffer yesterday in deciding whether or not to accept the plea. The time length between the guilty plea and his request that it be set aside was within 24 hours.

I would find that [Defendant] understood the consequences of the plea. I went through and thoroughly reviewed the plea transcript with him, talked to him about consequences, gave him an opportunity to consult with his lawyer, even during the plea transcript process. I will find that the plea was not entered in haste. The cases have been pending, some of them back to 2022. There was a plea offer made, I understand it was made this week. He had an opportunity to consider whether he wished to accept that or not. The State does not have to make a plea offer. They can withdraw it at any point. Gave him an opportunity to do that. The plea was entered into yesterday, which was Wednesday, in the middle of the week.

I would find that he was not under coercion . . . at that time. He specifically said something about having a bond hearing. Of course, it's the [c]ourt's decision whether or not bonds are revoked. Anyone can come before the [c]ourt and seek that the bond be modified, [Defendant] as well as the State, explained that process to him, said if he felt -- I explained on the record that -- I went through that question in terms of whether or not anyone had promised him or threatened him in any way. After I explained that process, he said no. I would find that he was not under coercion at the time, was not confused. He entered the plea that he did. [The] State took the action it did with regard[] to dismissing some of those charges.

I would find there was no manifest injustice in this matter and I would deny the motion.

Defendant gave oral notice of appeal.

II. Discussion

Defendant argues that the trial court erred by denying his post-sentencing motion to withdraw his *Alford* plea. He also contends that this matter should be remanded to the trial court to correct a clerical error appearing in the judgment.

A. Post-Sentencing Motion to Withdraw Plea

1. Standard of Review

“When a defendant seeks to withdraw a guilty plea . . . post-sentence, it is properly treated as a motion for appropriate relief.” *State v. Konakh*, 266 N.C. App. 551, 556, 831 S.E.2d 865, 869 (2019) (extraneity omitted). “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.” *Id.* (extraneity omitted). “Unchallenged findings of fact are presumed to be supported by competent evidence and are binding on appeal.” *Id.* (extraneity omitted). “[C]onclusions of law are fully reviewable on appeal.” *Id.*

2. Analysis

“While there is no absolute right to [the] withdrawal of a guilty plea, withdrawal motions made prior to sentencing, and especially at a very early stage of the proceedings, should be granted with liberality.” *State v. Handy*, 326 N.C. 532, 537, 391 S.E.2d 159, 161–62 (1990) (citations omitted). Withdrawal of a guilty plea before sentencing is permitted where a defendant “meets his burden of showing that his motion is supported by a fair and just reason and the court determines that

withdrawal of the plea will not cause substantial prejudice to the State.” *State v. Suites*, 109 N.C. App. 373, 375, 427 S.E.2d 318, 320 (citation omitted), *disc. review denied*, 333 N.C. 794, 431 S.E.2d 29 (1993). By contrast, “[w]hen a defendant seeks to withdraw a guilty plea *after* sentencing, his motion should be granted only where necessary to avoid manifest injustice.” *Id.* (emphasis added).

As our Supreme Court has explained, “[i]t should be easier to withdraw a plea before sentenc[ing] than after” because:

First, once [a] sentence is imposed, the defendant is more likely to view the plea bargain as a tactical mistake and therefore wish to have it set aside. Second, at the time the sentence is imposed, other portions of the plea bargain agreement will often be performed by the prosecutor, such as the dismissal of additional charges or the return or destruction of physical evidence, all of which may be difficult to undo if the defendant later attacks his guilty plea. Finally, a higher post-sentence standard for withdrawal is required by the settled policy of giving finality to criminal sentences which result from a voluntary and properly counseled guilty plea.

Handy, 326 N.C. at 537, 391 S.E.2d at 161, 162.

In *Handy*, our Supreme Court articulated a number of factors relevant to a court’s consideration of a defendant’s pre-sentencing motion to withdraw a guilty plea, such as “whether the defendant has asserted legal innocence, the strength of the State’s proffer of evidence, the length of time between the entry of the guilty plea and the desire to change it, and whether the accused has had competent counsel at all relevant times.” *Id.* at 539, 391 S.E.2d at 163. Further, “[m]isunderstanding the

consequences of a guilty plea, hasty entry, confusion, and coercion are also factors for consideration.” *Id.* However, the *Handy* factors are neither “intended to be exhaustive nor definitive; rather, they are designed to be an instructive collection of considerations[.]” *State v. Taylor*, 374 N.C. 710, 723, 843 S.E.2d 46, 55 (2020).

This Court has concluded that the factors delineated in *Handy* also apply to post-sentencing motions to withdraw a guilty plea. *See State v. Shropshire*, 210 N.C. App. 478, 481, 708 S.E.2d 181, 183, *disc. review denied*, 365 N.C. 204, 710 S.E.2d 28 (2011); *State v. Russell*, 153 N.C. App. 508, 509, 570 S.E.2d 245, 247 (2002).

On appeal, Defendant argues that the following factors support his claim that the trial court’s denial of his post-sentencing motion to withdraw his plea constituted manifest injustice: “the fact that [Defendant] moved to withdraw his plea less than 24 hours after sentencing; his assertion of innocence; the weakness of the State’s case”; and the coercion inherent in the State’s leverage of its bond-modification motion “to induce [Defendant] to accept its plea offer” rather than spend Christmas in jail. We disagree.

Length of Time Between Plea and Motion to Withdraw

Defendant contends that “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.” (citing *Handy*, 326 N.C. at 539, 391 S.E.2d at 162). But as the State correctly notes, *Handy* involved a pre-sentencing motion to withdraw a plea, which is analyzed under the less demanding “fair and just reason” legal standard. *State v. Salvetti*, 202

N.C. App. 18, 34, 687 S.E.2d 698, 708 (citation omitted), *disc. review denied*, 364 N.C. 246, 699 S.E.2d 919 (2010). By contrast, a post-sentencing motion to withdraw a plea should be granted only where the defendant meets the heightened standard: that withdrawal of the plea is necessary to avoid manifest injustice. *Id.*

In the present case, Defendant has not shown how the timing of his post-sentencing motion to withdraw his plea weighs in favor of withdrawal—particularly when the State had already dismissed several pending charges in accordance with the parties’ plea arrangement. Thus, this factor ultimately does not weigh in favor of a determination of manifest injustice.

Assertion of Innocence

Defendant also maintains that he asserted his innocence before the trial court, contending that “a defendant necessarily asserts his innocence when he enters an *Alford* plea[.]”

Failure to assert his innocence weighs heavily against a defendant. *See State v. McGill*, 250 N.C. App. 121, 129, 791 S.E.2d 702, 707 (2016), *disc. review denied*, 369 N.C. 534, 797 S.E.2d 12 (2017). A plea of “no contest or an *Alford* plea does not conclusively establish the factor of assertion of legal innocence for purposes of the *Handy* analysis.” *State v. Chery*, 203 N.C. App. 310, 315, 691 S.E.2d 40, 44 (2010). “Significantly, our research has failed to produce a single case in which our appellate courts have found that the trial court erred in denying a defendant’s motion to withdraw his guilty plea where the defendant did not, as a ground for his motion,

assert his legal innocence.” *McGill*, 250 N.C. App. at 128, 791 S.E.2d at 707; *see, e.g., State v. Saldana*, 291 N.C. App. 674, 896 S.E.2d 193 (2023), *disc. review dismissed, cert. denied*, 386 N.C. 340, 901 S.E.2d 800 (2024); *Chery*, 203 N.C. App. 310, 691 S.E.2d 40; *State v. Watkins*, 195 N.C. App. 215, 672 S.E.2d 43 (2009); *State v. Villatoro*, 193 N.C. App. 65, 666 S.E.2d 838 (2008); *State v. Graham*, 122 N.C. App. 635, 471 S.E.2d 100 (1996).

Here, Defendant cites only his *Alford* plea—with no other evidence—to support his assertion of innocence. As this Court has determined, an *Alford* plea does not constitute an assertion of innocence for the purposes of the *Handy* factors. *Chery*, 203 N.C. App. at 315, 691 S.E.2d at 44. Indeed, Defendant stipulated that there was a factual basis for the plea. Thus, Defendant has failed to establish that he asserted his innocence, and this *Handy* factor weighs heavily against him. *McGill*, 250 N.C. App. at 129, 791 S.E.2d at 707.

Strength of the State’s Proffer of Evidence

Defendant next contends that the State’s case was “weak” because it “relied entirely on the testimony of a single witness”—Ms. Smith—who “had been uncooperative with the prosecution.” Defendant suggests that the trial court failed to properly evaluate the strength of the State’s case when it limited its analysis to whether there was a factual basis for the plea. We disagree.

“We must view the State’s proffer [of evidence] based upon what was presented to the court at the plea hearing.” *Chery*, 203 N.C. App. at 315, 691 S.E.2d at 45. “[A]

strong, uncontested forecast of evidence weighs against allowing a defendant to withdraw his plea.” *State v. Crawford*, 278 N.C. App. 104, 109, 861 S.E.2d 18, 23 (2021) (citation omitted), *disc. review denied*, 382 N.C. 728, 879 S.E.2d 582 (2022).

To support Defendant’s guilty plea to the charges of assault on a female, felonious restraint, and interfering with emergency communications, the State offered the following factual basis:

[W]hen [Ms. Smith] realized her boyfriend was at another place and not where he said he was go[ing] [to] be, she drove there, found [Defendant]. An argument ensued. That is when [Ms. Smith] indicated that she was pulled from her vehicle by [Defendant], put into his truck, and then driven away being assaulted during the entire process.

[Ms. Smith] did let deputies know that she attempted to call 911 during this felonious restraint portion. He then took her phone prohibiting her from doing that.

Defendant stipulated that there was a factual basis for the plea. He did not contest the sufficiency of the State’s proffer of evidence, other than to comment that “some of those facts are correct, some of them are not,” without offering further explanation or objection.

On appeal, Defendant asserts—without citation to authority—that “[a] proper evaluation of the strength of the State’s proffer of evidence would have involved considerations such as the likelihood of [Defendant’s] conviction at trial when the State’s entire case turned on the reliability of Ms. [Smith].” Yet our Supreme Court has determined that the “term that is dispositive of this *Handy* factor [is] ‘sufficient.’ ”

Taylor, 374 N.C. at 720, 843 S.E.2d at 53. That is, contrary to Defendant's unsupported position on appeal, the standard is not the likelihood of conviction; instead, it is the sufficiency of the State's evidence to support the plea.

Here, Defendant stipulated to the factual basis for the plea. Additionally, our appellate courts have consistently held that a plea's uncontested factual basis weighs against allowing the withdrawal of a guilty plea. *See id.* ("Since the strength of the State's proffer of evidence against [the] defendant that was presented as the factual basis at the plea hearing was essentially uncontested and therefore sufficient, we agree . . . that this factor likewise fails to support withdrawal of his guilty plea." (extraneity omitted)); *Chery*, 203 N.C. App. at 315, 691 S.E.2d at 45 ("We again note that [the] defendant did not contest the State's proffer of a factual basis for the plea at the hearing.").

Accordingly, this factor does not support a determination of manifest injustice.

Knowing and Voluntary Plea

Defendant further argues that because the State had filed a motion to modify his bond, Defendant was compelled to choose between accepting the State's offer of a plea arrangement that provided for no additional jail time or "the possibility of a huge arbitrary bond increase," which would have resulted in his incarceration during the Christmas holidays. He characterizes this choice as "coercive," rendering his plea involuntary. We disagree.

"A court may accept a guilty plea only if it is made knowingly and voluntarily."

Russell, 153 N.C. App. at 511, 570 S.E.2d at 248 (extraneity omitted). “A plea is voluntarily and knowingly made if the defendant is made fully aware of the direct consequences of his plea.” *Id.* (citation omitted). “[I]f the defendant signed a Transcript of Plea and the record reveals the trial court made a careful inquiry of the defendant, it is sufficient to show the defendant’s plea was knowingly and voluntarily made, with full awareness of the direct consequences.” *Id.* (extraneity omitted).

In the present case, Defendant signed a Transcript of Plea, and the trial court conducted an extensive colloquy before accepting the plea. During the colloquy, the trial court reviewed each question on the Transcript of Plea, ensuring that Defendant understood the plea, appreciated its consequences, and was satisfied with his legal counsel. While it is true that a motion to modify Defendant’s bond was pending, that decision was ultimately within the trial court’s discretion. Ultimately, the court allowed Defendant an additional opportunity to confer with defense counsel, and he expressly denied that the motion to modify the conditions of release influenced his decision to plead guilty.

Furthermore, Defendant received significant incentives to accept the plea. Pursuant to the plea arrangement, the State dismissed the 2022 charges of assault by strangulation, assault on a female, assault on a government official, and resisting a public officer and stipulated that Defendant would receive no jail time. Defendant was given two days to review the plea agreement, weigh his options, and make a reasoned decision rather than a hasty and coerced choice. Thus, we conclude that

Defendant knowingly and voluntarily entered into the plea without haste, confusion, or coercion. This *Handy* factor weighs against a determination of manifest injustice.

No Manifest Injustice

Defendant does not challenge the competency or effectiveness of his counsel, and the remaining *Handy* factors do not favor a conclusion of manifest injustice. Therefore, the trial court did not abuse its discretion in denying Defendant's motion to withdraw his guilty plea. Accordingly, Defendant's argument is overruled.

B. Clerical Error

Defendant notes on appeal—and the State concedes—that the judgment contains a clerical error as to the amount of attorney's fees that Defendant was ordered to pay as a condition of his probation. We agree.

The transcript reveals that the court ordered Defendant to pay \$767.00 in attorney's fees, but the judgment erroneously requires Defendant to pay \$1,534.00. Therefore, we remand to the trial court for the limited purpose of correcting the amount of attorney's fees that Defendant owes in this matter. *See State v. Smith*, 188 N.C. App. 842, 845, 656 S.E.2d 695, 696 (2008) ("When, on appeal, a clerical error is discovered in the trial court's judgment or order, it is appropriate to remand the case to the trial court for correction because of the importance that the record speak the truth." (extraneity omitted)).

III. Conclusion

For the foregoing reasons, we conclude that the trial court did not err in

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denying Defendant's post-sentencing motion to withdraw his *Alford* plea. Accordingly, we affirm the judgment but remand to the trial court for the limited purpose of correcting the clerical error therein concerning the amount of attorney's fees owed by Defendant.

AFFIRMED IN PART; REMANDED FOR CORRECTION OF CLERICAL ERROR.

Judges WOOD and GORE concur.