

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 KA 1785

STATE OF LOUISIANA

VERSUS

JAMES HIPPS

Judgment Rendered: March 23, 2007

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Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 6-05-0057

Honorable Richard D. Anderson, Judge

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James Hipps

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BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

WELCH, J.

The defendant, James Hipps, was charged by bill of information with simple burglary, a violation of La. R.S. 14:62. The defendant originally entered a plea of not guilty. The defendant later withdrew his plea of not guilty and entered a plea of guilty as charged.¹ The trial court denied the defendant's subsequent motion to withdraw his guilty plea. He was sentenced to eight years imprisonment at hard labor. The defendant now appeals, assigning as error the trial court's ruling, denying his motion to withdraw his guilty plea.

For the reasons that follow, we affirm the conviction and sentence.

FACTS

As the defendant entered a guilty plea, the facts of this case were not fully developed. The following facts were presented during the preliminary examination proceeding.

On May 2, 2005, at approximately 1:00 a.m., Officer Joel Charlson of the Baton Rouge City Police Department received an alarm dispatch to Derrick's Automotive, a business located within a strip mall on Choctaw Drive. When Officer Charlson arrived, he observed a white male near the door of the business. Since it was dark outside, Officer Charlson illuminated the individual using the spotlight on his marked police unit. Officer Charlson instructed the individual to approach the unit and to identify himself. He complied and identified himself as the defendant. The defendant claimed he was looking for someone. However, because of the early hour of the morning, Officer Charlson was suspicious.

The defendant's vehicle was positioned approximately twenty-five feet from

¹ On the date set for trial, May 2, 2006, the State noted plea negotiations wherein the defendant would be sentenced to eleven years imprisonment and the State would not file a habitual offender bill of information. The negotiations were modified to eight years imprisonment with the State still agreeing not to file a habitual offender bill of information. The defendant initially rejected the offer, and the trial was continued until the following day. On May 3, 2006, the defendant agreed to the plea negotiations.

the business door. When Officer Charlson approached the vehicle, the engine was running but the headlights were off. Officer Charlson observed audio speakers in plain view in the back passenger portion of the vehicle, both on the seat and on the floor. The owner of the store, Derrick Torrence, arrived and stated that he recognized the defendant from his prior deliveries of parts to the business. Torrence indicated that the defendant's last delivery was approximately four years ago, and that he did not have permission to be in the business on the date in question. Officer Charlson examined the door of the business and noted that it was not secured. The defendant was placed in the police unit for further questioning. After reading the defendant his **Miranda** rights, Officer Charlson interrogated the defendant.

Torrence informed Officer Charlson that he kept "woofer kicker" speakers in his office behind his desk. Torrence's description of the speakers matched the speakers observed by Officer Charlson in the defendant's vehicle. Officer Charlson and Torrence entered the business and noted that the speakers were missing. Torrence identified the speakers in defendant's vehicle as the speakers missing from his office. Torrence believed that he had left the door of his business unlocked.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues that the trial court committed reversible error when it denied his motion to withdraw his guilty plea without a hearing. The defendant contends that he gave sufficient details as to why his guilty plea was coerced. The defendant argues that the trial court should have cautiously held a hearing on his motion as it was filed pro se. The defendant specifically argues that the State's decision to seek the maximum possible sentence in the event of a conviction, coupled with his attorney being either intimidated or

unprepared, coerced him into withdrawing his former plea and pleading guilty. The defendant now asks that the matter be remanded for a hearing.

Article 559(A) of the Louisiana Code of Criminal Procedure gives the district court judge the discretion to permit a withdrawal of a guilty plea at any time prior to sentencing. Under this article, a defendant has no absolute right to withdraw a previously entered plea of guilty. The court's decision is discretionary, subject to reversal only if that discretion is abused or arbitrarily exercised. **State v. Lewis**, 633 So.2d 315, 317 (La. App. 1st Cir. 1993); **State v. Carmouche**, 589 So.2d 53, 55 (La. App. 1st Cir. 1991). Once a defendant has been sentenced, a guilty plea may not be withdrawn unless the plea is found to be constitutionally infirm. **State v. Bell**, 2000-1084, p. 5 (La. App. 5th Cir. 2/28/01), 781 So.2d 843, 847, writ denied, 2001-0776 (La. 4/26/02), 813 So.2d 1098.

Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969), requires the trial court to expressly enumerate three rights that must be waived by the accused prior to accepting a guilty plea. These rights include the privilege against self-incrimination, the right to trial by jury, and the right to confront one's accusers. Generally, a denial of a motion to withdraw a guilty plea will not be reversed on appeal if the record clearly shows that the defendant was informed of his rights and the consequences of his plea, and that the plea was entered into voluntarily. **State v. Raines**, 2000-1942, p. 4 (La. App. 5th Cir. 5/30/01), 788 So.2d 630, 633.

A guilty plea is a conviction and, therefore, should be afforded a great measure of finality. **State v. Thornton**, 521 So.2d 598, 600 (La. App. 1st Cir.), writ denied, 530 So.2d 85 (La. 1988). It is well settled that a guilty plea is constitutionally infirm when a defendant is induced to enter the plea by a plea bargain, or by what the defendant justifiably believes was a plea bargain, and the

plea bargain is not kept. In that instance, the defendant's plea is not considered to have been freely and knowingly given. **State v. Dixon**, 449 So.2d 463, 464 (La. 1984). When a motion to withdraw a plea is made prior to sentencing, a court may hold an evidentiary hearing, but is not required to do so. **State v. Burnett**, 33,739, p. 11 (La. App. 2nd Cir. 10/4/00), 768 So.2d 783, 791, writ denied, 2000-3079 (La. 11/2/01), 800 So.2d 864; **State v. Greer**, 572 So.2d 1166, 1169 (La. App. 1st Cir. 1990).

The evidence of record reveals that on the day before the trial, the State offered the defendant a plea bargain wherein the defendant would receive an eleven-year sentence for the instant offense and the State would not file a multiple offender bill of information. The State noted the extensive discussions between counsel and the judge and further noted the defendant's criminal background. The State noted that a multiple offender bill would be filed in the event of a trial and finding of guilt, and the defendant would be exposed to eight to twenty-four years' imprisonment. The defendant rejected the offer.

On the day of the trial, the defendant decided to plead guilty. The guilty plea colloquy shows that defendant admitted that he understood that it was his decision to plead guilty and he could not be forced to do so. The defendant further indicated that he was satisfied with his attorney's representation. The trial court enumerated the elements of the offense and the sentencing range. The trial court further explained that the conviction could be used to enhance future penalties against the defendant. The defendant does not contest, and the record shows, that the trial court advised him of his constitutional rights. He was specifically informed of his right against self-incrimination, and his rights to a jury trial and to confront his accusers. The defendant stated that he understood those rights and wished to waive them.

We also note that the defendant was questioned as to whether anyone used any force, intimidation, coercion, or promise of reward to force him to plead guilty. In response, the defendant stated, “No, sir, but I was offered a plea bargain.” The trial court asked the defendant to state his understanding of the plea bargain. The defendant responded as follows: “My perception is that I will receive eight years and no habitual fel – felony and I’ll be through with the court. And also that it would be – the sentence will be set off 30 to 45 days so I can get my parole officer to revoke my –.” The trial court interrupted and confirmed that the defendant would be sentenced forty-five days following the plea. The State submitted the factual basis as the one presented during the preliminary examination. The defendant stated that he was 41 years old, had a twelfth-grade-level education, was able to read and write in English, and was an automotive technician. The defendant indicated that he understood the proceedings and did not have any questions.

Prior to the sentencing proceeding, the defendant filed a pro se motion to withdraw his guilty plea. The defendant’s motion did not raise the issue presented herein. However, the argument presented by the defendant in support of the motion on the date of the sentencing is consistent with the arguments presented herein on appeal. After denying the defendant’s motion to withdraw his guilty plea, the trial court sentenced the defendant to eight years imprisonment at hard labor. The defendant does not claim, nor does the record reveal, a lack of compliance with the plea agreement.

We find that the record reflects a knowing and voluntary waiver of the defendant's rights and the trial court’s compliance with the constitutional requirements for the taking of voluntary guilty pleas. The record does not support the defendant’s claim that he was coerced into pleading guilty. The defendant was simply induced to enter a guilty plea by a plea bargain, and that plea bargain was

kept. As noted above, the defendant was not entitled to a hearing. Nonetheless, the defendant was afforded the opportunity to argue the merits of his motion at the sentencing hearing. After the defendant presented his argument, the trial court denied the motion. The defendant did not object to the lack of a hearing. Thus, the defendant has not properly preserved that issue for appeal. See La. C.Cr.P. art. 841; **Greer**, 572 So.2d at 1169. Based on our review of the record, we hold that the trial court did not abuse its discretion in denying the motion to withdraw the plea. The assignment of error lacks merit.

CONVICTION AND SENTENCE AFFIRMED.