

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2006 KA 1826**

**STATE OF LOUISIANA**

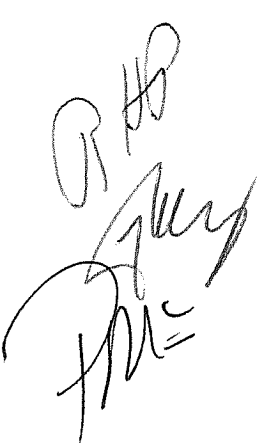
**VERSUS**

**DANTROID COLLINS**

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**On Appeal from the 19th Judicial District Court  
Parish of East Baton Rouge, Louisiana  
Docket No. 02-04-0118, Section II  
Honorable Richard D. Anderson, Judge Presiding**

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Dantroid Collins**

**BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.**

**Judgment rendered March 23, 2007**

**PARRO, J.**

The defendant, Dantroid Collins, was originally charged by grand jury indictment with conspiracy to commit armed robbery (count one), armed robbery (count two), and attempted first degree murder (count three), violations of LSA-R.S. 14:26 and 64, LSA-R.S. 14:64, and LSA-R.S. 14:27 and 30, respectively. The defendant entered a plea of not guilty. The trial court denied the defendant's motion to suppress identification evidence. After the jury trial began, the state amended the charges to aggravated battery (counts one and two) and aggravated assault with a firearm (count three), violations of LSA-R.S. 14:34 and LSA-R.S. 14:37.4, respectively; the defendant pled guilty to the amended charges. Pursuant to the plea agreement, the defendant was sentenced to ten years of imprisonment at hard labor as to each of counts one and two, and also to five years of imprisonment at hard labor as to count three. The sentences on each count were to be served consecutively to each other for a total of twenty-five years of imprisonment. The trial court denied the defendant's pro se motion to withdraw his guilty pleas and his motion to reconsider the sentences. The defendant now appeals, raising the following assignments of error:

1. The trial court abused its discretion in failing to hold a hearing prior to denying the defendant's motion to withdraw his guilty pleas.
2. The trial court abused its discretion in failing to set aside the defendant's guilty pleas and vacate his sentences.
3. The trial court abused its discretion in failing to reconsider the defendant's sentences.

For the following reasons, we affirm the convictions and sentences.

**STATEMENT OF FACTS**

As the defendant entered guilty pleas, the facts are not fully developed. The state introduced the following factual basis during the *Boykin* proceeding:

Your Honor, if this went to trial today, the State would be prepared to show through 27 witnesses that this individual was a participant in the armed robbery of Albertsons (sic) at Highland Road and Airline, whereupon Trooper Kirk Martin, who is present in the courtroom, was there shopping and when he heard a lady scream, he came around the

corner, whereupon a shooter shot him twice. Michael Sims was the codefendant with Mr. Dantroid Collins. Mr. Sims brought a green bag into the bank in order to rob it. It had blood on that bag. The bag was a DNA match to Michael Sims. When Michael Sims was arrested, he stated that Dexter Collins and Dantroid Collins were the participants in the armed robbery. Since then Michael Sims has said that Dantroid Collins was the shooter. I understand Mr. Dantroid Collins says that Emanuel Brown was the shooter. Mr. Sims when confronted with that maintains that Dantroid Collins was the shooter. Based on the knowledge that Sims gave, a photographic lineup was shown to Ms. Becky Smart, whereupon she picked out Dantroid Collins as being an individual who got out of the get-away car at Construction Materials, which is next to Ruffino's, and took off his mask at an inopportune time for him, whereupon she made a photographic lineup, as he pointed the gun at her and she saw him from less than 25 feet and identified him as the individual who got out of get-away car. I would be able to provide a trail of witnesses saying that the robbers and the shooters got out of the Albertson's and Bank One, which was located within Albertson's, fled into the parking lot and got to the car specific to Ms. Smart's identification. There was approximately seven shots fired by the individual who shot the trooper, and there was approximately four shots fired by the individual Michael Sims behind the bank wall. Michael Sims by Louisiana State Police Ballistics Testing could not have been the shooter of Trooper Kirk Martin.

### **ASSIGNMENTS OF ERROR NUMBERS ONE, TWO, AND THREE**

In a combined argument, the defendant notes that the factual allegations stated in his pro se motion to withdraw his guilty pleas, if true, may invalidate the defendant's guilty pleas. Thus, the defendant argues that the trial court should have held an evidentiary hearing before ruling on the motion. The defendant further contends that there is no evidence in the record that the defendant agreed to the sentences or understood what would happen once he pled guilty. The defendant contends that only the defense counsel was questioned as to whether the defendant understood the consequences of his guilty pleas. The defendant argues that the trial court's failure to question the defendant personally as to whether he understood the sentences he was to receive rendered the guilty pleas constitutionally infirm. The defendant contends that his motion to reconsider sentence reflects his lack of an understanding of the ramifications of the guilty pleas that his counsel negotiated. The defendant argues that the sentences are invalid, as they do not rest upon valid guilty pleas. The defendant concludes that the trial court abused its discretion in failing to grant the motion to

withdraw the guilty pleas and in failing to reconsider the sentences imposed.<sup>1</sup>

In his motion to withdraw his guilty pleas, the defendant stated that he did not know what he was doing when he pled guilty to the charges. The defendant further stated that his attorney instructed him to answer the trial court's questions by stating "yes" or "no." The defendant stated that he was innocent and only pled guilty because his attorney told him that no one would believe that he was innocent and that he would receive the maximum sentence based on his involvement.

A guilty plea is a conviction and, therefore, should be afforded a great measure of finality. *State v. Jackson*, 597 So.2d 526, 529 (La. App. 1st Cir.), writ denied, 599 So.2d 315 (La. 1992). A trial judge's decision on a motion to withdraw a guilty plea is discretionary and subject to reversal only if that discretion is abused or arbitrarily exercised. *State v. Hebert*, 506 So.2d 863, 865 (La. App. 1st Cir. 1987). Louisiana Code of Criminal Procedure article 559(A) provides that the court may permit a plea of guilty to be withdrawn at any time before sentence. If a motion for withdrawal of a guilty plea contains "specific allegations that the guilty plea was involuntary, the *Boykin* colloquy was defective, there was a breach of the plea bargain agreement, or some other specific allegation that the plea is constitutionally infirm, the trial court should vacate the plea or conduct a hearing on the matter." *State v. Parker*, 581 So.2d 314, 318-19 (La. App. 1st Cir. 1991). Once the defendant has been sentenced, only guilty pleas which are constitutionally infirm may be withdrawn as the result of an appeal or post-conviction relief. *State v. Green*, 03-410 (La. App. 5th Cir. 10/28/03), 860 So.2d 237, 242, writ denied, 03-3228 (La. 3/26/04), 871 So.2d 346. A guilty plea is constitutionally infirm when the defendant is induced to enter that plea by a plea agreement which is not fulfilled. *State v. Dixon*, 449 So.2d 463, 464 (La. 1984); *Green*, 860 So.2d at 242. Generally, a denial of a motion to withdraw a guilty plea will not be reversed on appeal if the record clearly shows the defendant was informed of his

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<sup>1</sup> The defendant does not contend that the sentences are unconstitutionally excessive. The defendant simply argues that the sentences should not stand, as the convictions are invalid.

rights and the consequences of his plea, and that the plea was entered into voluntarily. **Green**, 860 So.2d at 242. It is also well-settled that a misunderstanding between a defendant and counsel for defendant does not have the same implication as a breached plea bargain agreement, and this misunderstanding does not render the guilty plea invalid. **State v. Lockwood**, 399 So.2d 190, 193 (La. 1981); **State v. Johnson**, 533 So.2d 1288, 1292 (La. App. 3rd Cir. 1988), writ denied, 563 So.2d 873 (La. 1990). When the record establishes that an accused was informed of and waived his right to trial by jury, to confront his accusers, and against self-incrimination, the burden shifts to the accused to prove that despite this record, his guilty plea was involuntary. **State v. Bradford**, 627 So.2d 781, 783 (La. App. 2nd Cir. 1993), writ denied, 94-0006 (La. 4/22/94), 637 So.2d 154; see also **Boykin v. Alabama**, 395 U.S. 238, 243, 89 S.Ct. 1709, 1712, 23 L.Ed.2d 274, 279 (1969).

Prior to the **Boykin** examination, the trial court asked the defendant to state his name, address, and date of birth for the record. The prosecutor then noted that the bill of indictment had been amended to correspond with an offer made by the defendant to plead guilty to the amended charges. The prosecutor specifically denoted the agreed-upon sentences and stated that the sentences would be served consecutively to each other for a total imprisonment term of twenty-five years. The trial court inquired as to whether that was the agreement and defense counsel responded positively. The trial court questioned the defendant personally as to whether he discussed the case with his attorney, whether his attorney answered any questions, and whether he was satisfied with his attorney's representation. The defendant responded positively to each question. The defendant also responded positively when asked if he understood that it was his decision to plead guilty and that he could not be forced to plead guilty. The trial court defined the offenses, stated the penalty provisions for the offenses, and

asked the defendant whether he understood the penalty provisions.<sup>2</sup> The defendant confirmed that he understood the penalty provisions.

The trial court informed the defendant that he was presumed innocent and that by pleading guilty, he relieves the state of its burden to prove guilt beyond a reasonable doubt. The trial court further explained and questioned the defendant as to his understanding of the consequences of pleading guilty, including the waiver of his right to a trial by jury, to compulsory process, to confront and cross-examine witnesses, his right against self-incrimination, his right to an appeal, and his right to have an attorney appointed if he cannot afford one. After the state introduced the factual basis for the pleas, the trial court asked the defendant if he was under the influence of any drugs, alcohol, or medication at the time, and the defendant responded negatively. The defendant confirmed that he did not have any mental or physical disabilities that would prevent him from understanding the proceedings. The trial court asked the defendant if anyone used force, intimidation, coercion, or promise of reward to induce the defendant to plead guilty, and the defendant responded negatively. The defendant stated that his level of education was eleventh grade. The defendant confirmed his understanding of the proceedings and that he did not have any questions. The trial court informed the defendant that his pleas could be used in the future to enhance penalties against him.

The defendant then pled guilty to the offenses and was sentenced on May 23, 2006. On June 19, 2006, the defendant filed the motion to withdraw his guilty pleas after he was sentenced. Thus, the trial court did not abuse its discretion in denying the motion without a hearing. Moreover, the defendant's motion to withdraw did not specifically allege that the guilty pleas were involuntary, that the *Boykin* colloquy was

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<sup>2</sup> As specifically stated by the trial court, the defendant was subject to a fine of not more than five thousand dollars, or imprisonment for not more than ten years with or without hard labor, or both, for each aggravated battery offense; and the defendant was subject to a fine of not more than five thousand dollars, or imprisonment for not more than five years with or without hard labor, or both, for the aggravated assault with a firearm offense.

defective, or that there was a breach of the plea bargain agreement or some other constitutional infirmity. We note that the defendant did not claim his innocence to the trial court during the guilty plea proceeding. Nonetheless, the fact that a defendant believes he is innocent, even if he makes such belief known to the court, does not preclude him from entering a guilty plea. *State v. Castaneda*, 94-1118 (La. App. 1st Cir. 6/23/95), 658 So.2d 297, 303. Moreover, the state submitted an adequate factual basis for the guilty pleas.

We find that the *Boykin* transcript clearly shows that the defendant was carefully informed of his rights and the consequences of his pleas, and that the pleas were entered into knowingly and voluntarily. There is nothing in the record to suggest that the defendant was misled, and there is no indication that his guilty pleas were in any way coerced. We further find that the defendant fully appreciated the consequences of his actions. Additionally, there is nothing in the record to suggest, nor is it even alleged, that any condition of the plea bargain was breached. Thus, we find no merit to the defendant's arguments pertaining to the validity of the guilty pleas or the sentences imposed. For the foregoing reasons, these assignments of error are without merit.

**CONVICTIONS AND SENTENCES AFFIRMED.**