

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs August 15, 2023

FILED

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Clerk of the
Appellate Courts

STATE OF TENNESSEE v. JEFFREY WAYNE SEIDEL

**Appeal from the Criminal Court for Davidson County
No. 2016-C-1797 Amanda Jane McClendon, Judge**

No. M2022-01169-CCA-R3-CD

Defendant, Jeffrey Wayne Seidel, challenges the denial of his pre-sentencing motion to withdraw his guilty plea to second offense driving under the influence (“DUI”). Defendant contends the trial court abused its discretion by failing to consider the factors set out by our supreme court in *State v. Phelps*, 329 S.W.3d 436, 447 (Tenn. 2010), and that he established a “fair and just reason” to permit the withdrawal of his guilty plea. After a thorough review of the record and the parties’ briefs, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

ROBERT L. HOLLOWAY, JR., J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and J. ROSS DYER, JJ., joined.

Stephen J. Salwierak, Nashville, Tennessee, for the appellant, Jeffrey Wayne Seidel.

Jonathan Skrmetti, Attorney General and Reporter; Caroline Weldon, Assistant Attorney General; Glenn Funk, District Attorney General; and Charles N. Yarbrough, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual and Procedural Background

On September 19, 2016, the Davidson County Grand Jury indicted Defendant for DUI, third offense, and DUI, per se. Defendant was arraigned on these charges on October 27, 2016; at that time, he was represented by initial counsel. On February 21, 2018, initial counsel filed a motion to withdraw from representing Defendant, citing Defendant’s failure “to fulfill his contractual obligations” to initial counsel. Following a hearing on March 25,

2018, the trial court granted the motion and appointed second counsel to represent Defendant. The trial court subsequently appointed third counsel after granting second counsel's request to withdraw from representing Defendant.

On January 27, 2022, Defendant pled guilty, pursuant to a plea agreement, to the lesser-included offense of DUI, second offense, and the State dismissed the charge of DUI, per se. The State provided the following factual basis for Defendant's plea at the guilty plea submission hearing, which Defendant agreed was "true and correct":

If [Defendant's] case proceeded to trial, the State would have brought proof to show that on August 7, 2015, approximately 3:40 in the morning, officers with Metro Police Department were dispatched to [the] intersection of Acre Trail and Freda Villa here in Davidson County on reports of a person asleep behind the wheel at that location. On arriving, officers discovered [D]efendant behind the wheel of his car with the vehicle running. Indicators of possible impairment [were] observed, including the odor of alcohol, bloodshot eyes, and being unsteady on his feet. Field sobriety test[s] [were] administered showing indicators of impairment on each test performed.

Defendant filed a "Petition to Enter Plea of Guilty," setting out the terms of his plea agreement, which the trial court reviewed with Defendant. The trial court also advised Defendant of his constitutional rights in accordance with Rule 11 of the Tennessee Rules of Criminal Procedure, and Defendant agreed that he wanted to waive those rights and enter a plea of guilty. The trial court took the guilty plea under advisement until July 13, 2022, "with an agreed order to [the] terms of [the] plea and [the] altering of conditions of release entered[.]"

The parties filed an "Agreed Order to Terms of Plea and Altering Conditions of Release" the day of the plea. The agreed order provided that Defendant would receive a sentence of eleven months and twenty-nine days "with all but [forty-five] days of incarceration . . . suspended to probation, should Defendant abide by all terms of the agreement, or else the entirety of the length and manner of the sentence [would] be determined by the Court." Additional conditions included that Defendant would: (1) attend and complete alcohol treatment; (2) attend and complete the Victim Impact Panel; (3) lose his driving privileges for two years; (4) be fined \$600; (5) obtain a restricted driver's license in the state where he resides and . . . comply with that state's laws regarding said restricted driver's license; and (6) be required to forfeit any weapons in his possession.

The agreed order specified that Defendant had to complete his forty-five days of incarceration no later than July 1, 2022, and that Defendant would be allowed to serve his

incarceration in seventy-two-hour increments.¹ The agreed order further provided that, in the event Defendant failed to complete the forty-five days of incarceration by July 1, 2022, he would be required to serve any remaining jail time as consecutive days and that Defendant would “go into custody to begin said sentence immediately after the [July 13, 2022] sentencing hearing.” The agreed order stated that “Defendant must not incur any further criminal charges between the date of his plea, January 27, 2022, and the date of his sentencing hearing on July 13, 2022”; that “[s]hould Defendant fail to satisfy any of the terms listed within the above-referenced Order, the State will request that this Honorable Court sentence Defendant accordingly, irrespective of the plea agreement memorialized within this Order”; and that “Defendant acknowledges that the Court could sentence him up to [eleven] months and [twenty-nine] days to serve.”

On July 8, 2022, Defendant filed a timely “Motion to Withdraw Guilty Plea” pursuant to Tennessee Rule of Criminal Procedure 32(f).² In his motion, Defendant asserted he had learned, “about July 7, 2022,” that Metro-Nashville Police Department (MNP) Officer John Roberson, who had conducted the DUI investigation in his case including the standardized field sobriety tasks, had passed away on October 21, 2021. Defendant alleged that Officer Roberson’s death was “a critical fact relating to his prosecution upon which [Defendant] would have relied in determining whether or not to enter into the plea negotiated on his behalf by counsel.” Defendant averred:

Officer Roberson would have been a critical witness for the State in the case against [Defendant], were he not deceased and were the case to have gone to trial. [Defendant] asserts that, had he known the State’s most important witness was not available, he would not have entered a guilty plea. [Defendant], through no fault of his own, relied on incomplete information at the time of his plea.

On July 12, 2022, the State filed a “Motion to Revoke, Increase, or Alter Bail.” The State’s motion alleged that, on May 15, 2022, Defendant was arrested by the Monroe Police Department in Monroe, Wisconsin, and charged with “Operating While Under the Influence—3rd Offense . . . and Failure to Keep Vehicle Under Control[,]” in violation of his bond conditions.

At a hearing conducted on August 17, 2022, the parties first stipulated the fact that “Officer Roberson, who did the DUI investigation, . . . pass[ed] away on October the 21st, 2021.”

¹ The record indicates that Defendant was not able to begin his forty-five-day sentence immediately because the jail was on “lockdown,” and the parties were unsure when the lockdown would be lifted.

² Defendant also filed an “Agreed Order of Substitution of Counsel,” substituting third counsel, who represented Defendant at the time of his guilty plea, with newly-retained present counsel.

Defendant testified that, when he pled guilty on January 27, 2022, he was unaware that Officer Roberson was deceased. He said that he presumed Officer Roberson would be available to testify against him at trial. Defendant stated that counsel who represented him at the plea hearing never discussed Officer Roberson's death with him. Defendant testified that, if he had known that Officer Roberson had passed away, he would not have pleaded guilty and, instead, would have requested a trial. Defendant stated that he learned of Officer Roberson's death in "early July 2022."

On cross-examination, Defendant testified that, after he entered his guilty plea, he temporarily relocated to Wisconsin. He explained that he no longer lived in Tennessee but that he had "dual residence" in Wisconsin and Georgia. Defendant first said that he learned about Officer Roberson's death through an internet search. He then stated that this fact was "brought . . . to [his] attention" by initial counsel in early July 2022.

Defendant argued that he did not enter his guilty plea "knowingly and intelligently with full knowledge of the circumstances[.]" Defendant asserted that "[w]aivers of constitutional rights not only must be voluntary, but also must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences." Defendant further noted that because he made a pre-sentencing request to withdraw his guilty plea, he only had to show a "fair and just reason to withdraw his plea" and "not the higher standard of correcting a manifest injustice[.]"

The State responded that Defendant had not established a "good and just" reason for the withdrawal of his guilty plea. The State asserted that Defendant had not complied with the agreed order that was filed at the time of his guilty plea. The State argued:

[Defendant] has not reported for a single day that he agreed and swore to do back in January of this year. So right out of the gate, the State was prepared to ask that . . . the Court take [Defendant] into custody for failing to honor that agreed order.

Now, over five months, during which time he is supposed to be intermittently reporting -- five months into that period, there is this knowledge that is learned that was also unknown to the State at the time this agreement was entered into. And it's just not a good and just reason, Your Honor.

The State further noted that a suppression hearing had been conducted in Defendant's case prior to his guilty plea and that Officer Roberson had testified at that hearing.³ The State asserted:

The suppression hearing that I'm sure Your Honor recalls from . . . about a year prior to this, where Officer Roberson was present -- there was [a] very valid reason for no one to check and see if everyone in the case was still alive at the time of entry of the plea because we'd been here and had a suppression motion. He was here in person and testified at that hearing.

Defendant argued, in rebuttal, that "anything that's happened subsequent to January 27 . . . is not relevant" and that "what matters is that [when] he entered into an agreement, waived fundamental constitutional rights, and the fact is conceded by the State that nobody knew of this fundamental important circumstance he was not made aware of, which you've heard, clearly, he says, would have impacted his decision making."

At the close of the hearing, the trial court found that "the facts argued here are not good and just reasons." The court noted that the case had been set for trial on July 16, 2018, but that Defendant had requested a continuance. The court continued:

I see nothing but bad faith, here.

And you say it's irrelevant that he hasn't served a day. I guess that, to me, it actually kind of indicates to me that he knew way -- he might've known at the time he did the plea that the man was dead.

Because, you know, there's actually three witnesses listed on the indictment. One with the crime lab, but there's another officer beside the one that passed.

So I'm going to deny the motion to set aside the plea.

The trial court then sentenced Defendant in accordance with the terms of the guilty plea and entered the judgments of conviction. This timely appeal follows.

³ In his brief, Defendant asserts that the trial court granted his motion and suppressed the results of a chemical test of his blood sample. However, no transcript of the suppression hearing or order to that effect is included in the appellate record.

Analysis

On appeal, Defendant contends that the trial court abused its discretion by failing to consider the factors set out by our supreme court in *Phelps*. Defendant argues, however, that the record on appeal is sufficient to allow this court to conduct its own analysis under the *Phelps* factors and conclude that Defendant established a “fair and just reason” to permit the withdrawal of his guilty plea, which he contends was not knowingly entered. The State responds that the trial court acted within its discretion by denying Defendant’s motion to withdraw his guilty plea.

Standard of Review

This court reviews a trial court’s decision regarding a motion to withdraw a guilty plea for an abuse of discretion. *Phelps*, 329 S.W.3d at 443 (citing *State v. Crowe*, 168 S.W.3d 731, 740 (Tenn. 2005)). An abuse of discretion occurs when a trial court “applies incorrect legal standards, reaches an illogical conclusion, bases its ruling on a clearly erroneous assessment of the proof, or applies reasoning that causes an injustice to the complaining party.” *Id.* (citing *State v. Jordan*, 325 S.W.3d 1, 38-40 (Tenn. 2010)). An appellate court will “also find an abuse of discretion when the trial court has failed to consider the relevant factors provided by higher courts as guidance for determining an issue.” *Id.* (citing *State v. Lewis*, 235 S.W.3d 136, 141 (Tenn. 2007)).

Tennessee Rule of Criminal Procedure 32(f)

Tennessee Rule of Criminal Procedure 32(f) provides that a trial court may grant a motion to withdraw a guilty plea for any fair and just reason before the sentence has been imposed. Tenn. R. Crim. P. 32(f)(1). After the sentence has been imposed but before a judgment becomes final, “the court may set aside the judgment of conviction and permit the defendant to withdraw the plea to correct manifest injustice.” Tenn. R. Crim. P. 32(f)(2). Under Rule 32(f), “a criminal defendant who has pled guilty does not have a unilateral right to later withdraw his plea either before or after sentencing.” *Phelps*, 329 S.W.3d at 444 (citing *Crowe*, 168 S.W.3d at 740; *State v. Mellon*, 118 S.W.3d 340, 345 (Tenn. 2003)); *see also State v. Turner*, 919 S.W.2d 346, 355 (Tenn. Crim. App. 1995). However, “the trial judge should always exercise his discretion with caution in refusing to set aside a plea of guilty, to the end that one accused of crime may have a fair and impartial trial[.]” *Id.* (quoting *Henning v. State*, 201 S.W.2d 669, 671 (Tenn. 1947)). “The defendant bears the burden of establishing sufficient grounds for withdrawing his plea.” *Id.* (citing *Turner*, 919 S.W.2d at 355).

Because Defendant filed his “Motion to Withdraw Guilty Plea” prior to sentencing, he had to establish a “fair and just reason” to withdraw his plea. Tenn. R. Crim. P. 32(f)(1).

In *Phelps*, our supreme court adopted a multi-factor analysis for determining what constitutes “any fair and just reason” supporting a defendant’s withdrawal of a guilty plea prior to sentencing. *Id.* at 446-47. The non-exclusive list of factors that a trial court should consider include:

(1) the amount of time that elapsed between the plea and the motion to withdraw it; (2) the presence (or absence) of a valid reason for the failure to move for withdrawal earlier in the proceedings; (3) whether the defendant has asserted or maintained his innocence; (4) the circumstances underlying the entry of the guilty plea; (5) the defendant’s nature and background; (6) the degree to which the defendant has had prior experience with the criminal justice system; and (7) potential prejudice to the government if the motion to withdraw is granted.

Id. at 446 (quoting *United States v. Haygood*, 549 F.3d 1049, 1052 (6th Cir. 2008)) (internal quotation marks omitted). “[N]o single factor is dispositive[,] and . . . the relevance of each factor varies according to the circumstances surrounding both the plea and the motion to withdraw.” *Id.* (citing *Haygood*, 549 F.3d at 1052). Additionally, “a trial court need not consider the seventh factor unless and until the defendant establishes a fair and just reason for permitting withdrawal.” *Id.* at 446-47 (citing *United States v. Ellis*, 470 F.3d 275, 286 (6th Cir. 2006)).

In this case, review of the appellate record shows that the trial court did not consider the factors in *Phelps*. However, because the record contains all the information presented to the trial court at the time that the court made its decision regarding the motion to withdraw the guilty plea, we will conduct our own analysis of the *Phelps* factors in determining whether there was “any fair and just reason” for Defendant to withdraw his guilty plea. *See id.* at 448-51; *State v. Carter*, No. M2010-02248-CCA-R3-CD, 2012 WL 2308293, at *7-9 (Tenn. Crim. App. June 18, 2012) (concluding that the trial court erred in failing to apply the *Phelps* factors to the evidence and conducting its own analysis to determine whether there was “any fair and just reason” for the defendant to withdraw his guilty plea).

First, over five months elapsed between Defendant’s plea on January 27, 2022, and the motion to withdraw his guilty plea filed on July 8, 2022. We note that Defendant filed the motion to withdraw his guilty plea after picking up a new charge for the same offense in another jurisdiction and days before his sentencing hearing in this case, at which time Defendant would have been sentenced to serve forty-five days’ incarceration, at a minimum. Moreover, because Defendant failed to satisfy the terms of the agreed order, the trial court could have sentenced Defendant to eleven months and twenty-nine days’ incarceration. This first factor clearly weighs against Defendant. *See Phelps*, 329 S.W.3d

at 449 (concluding a period of “almost seven weeks” between the entry of the plea and the filing of the motion to withdraw the guilty plea was “a significant length of time” and “weigh[ed] somewhat against Defendant”); *State v. Tipton*, No. E2012-00038-CCA-R3-CD, 2013 WL 1619430, at *12 (Tenn. Crim. App. Apr. 13, 2013) (stating that a period of more than six weeks between the entry of the guilty plea and the filing of the motion to withdraw the guilty plea was “a substantial amount of time”).

Regarding the second factor, the presence of a valid reason for the failure to move for withdrawal earlier in the proceedings, Defendant testified that he did not know about Officer Roberson’s death before early July 2022. We note, however, that the trial court questioned the credibility of Defendant’s testimony in this regard. The trial court found that Defendant was acting in bad faith by filing the motion to withdraw his guilty plea, stating that the fact that Defendant had not “served a day” of his sentence pursuant to the agreed order indicated that Defendant “might’ve known at the time he did the plea that [Officer Roberson] was dead.” Because the trial court did not accredit Defendant’s testimony regarding why he failed to move to withdraw his plea earlier, this factor also weighs against Defendant.

As to the third factor, Defendant has not maintained his innocence during the proceedings in this case. The record shows that, at the plea submission hearing, Defendant entered a guilty plea to the lesser-included offense of DUI, second offense; he did not enter a no contest plea. The transcript from the plea submission hearing shows that Defendant acknowledged his guilt and agreed that the facts supporting his guilty plea, as recited by the State, were “true and correct.” Moreover, at the hearing on the motion to withdraw his guilty plea, Defendant never asserted that he did not commit the offense. Consequently, this third factor weighs against Defendant.

Regarding the fourth factor of the circumstances of Defendant’s plea, the record shows that Defendant was represented by counsel when he filed his “Petition to Enter Plea of Guilty,” which set out the terms of Defendant’s plea agreement. A review of the transcript of Defendant’s guilty plea shows that Defendant testified under oath that counsel had reviewed the plea petition with him and that he was satisfied with counsel’s representation. Upon questioning by the trial court, Defendant denied that he was under the influence of drugs or alcohol and denied that he suffered from any mental illness or learning disability. The trial court then reviewed the plea petition with Defendant and advised Defendant of his constitutional rights and his sentencing exposure. Defendant agreed that he understood his constitutional rights and wanted to waive those rights and enter a plea of guilty. Defendant also affirmed that he was not being forced or threatened into pleading guilty. The record further reflects that Defendant never expressed any confusion or misunderstanding during the plea submission hearing. *Compare Phelps*, 329 S.W.3d at 450-51 (concluding that this factor weighed in the defendant’s favor after noting

that the defendant “repeatedly expressed confusion and frustration about the [guilty plea] proceedings”), with *Carter*, 2012 WL 2308293, at *8 (stating that “[u]nlike the defendant in *Phelps*, the [d]efendant here never expressed any confusion or frustration about the guilty plea proceedings”).

In his brief, Defendant notes that he entered his guilty plea alongside another defendant charged with DUI; due to this, Defendant contends that the entry of his plea was “not ideal” and “may have served to distract from the details relating only to [Defendant’s] case.” However, from the transcript it does not appear that the presence of another defendant had any impact on Defendant’s ability to understand the nature of the proceeding. *Cf. Phelps*, 329 S.W.3d at 451 (noting that the defendant entered a “group plea” alongside three other defendants, but emphasizing that the defendant “repeatedly expressed confusion and frustration about the proceedings” during the plea hearing).

Defendant also argues that the death of Officer Roberson was a “critically important circumstance underlying the entry of [Defendant’s] plea” and that, “had he known the officer was not available to testify, he would not have entered into his plea agreement.” This argument is unavailing. As set forth by the State at the plea submission hearing and agreed to by Defendant, the record shows that more than one officer responded to the location where Defendant was found passed out behind the wheel of his car, and we note that the indictment listed not only Officer Roberson as a witness for the State but also MNPD Officer John Joyce and Heather Singletary with the MNPD Crime Lab. Additionally, at the hearing on the motion to withdraw Defendant’s guilty plea, the State noted that Officer Roberson previously testified in this case at a motion to suppress hearing. Defendant has not explained why Officer Roberson’s prior testimony would not be admissible at trial under the former testimony exception to the hearsay rule when the declarant is unavailable as a witness. *See* Tenn. R. Evid. 804(a)(4), (b)(1). Thus, we conclude that this factor also weighs against Defendant.

Regarding the fifth factor, we note that the record contains limited testimony regarding Defendant’s nature and background and does not contain a presentence report. It appears from the judgment of conviction that Defendant was fifty-eight years old at the time of his guilty plea, and as previously noted, he testified at the plea submission hearing that he had no mental health concerns and no issues with learning disabilities. The record contains no evidence regarding Defendant’s family, employment history, educational background, or whether Defendant has ever sought treatment for drug or alcohol abuse. The record shows, however, that while on bond in this case, Defendant was arrested in Wisconsin for “Operating While Under the Influence—3rd Offense . . . and Failure to Keep Vehicle Under Control.” We reiterate that Defendant “bears the burden of establishing sufficient grounds for withdrawing his plea,” *Phelps*, 329 S.W.3d at 444, and conclude that factor five weighs against Defendant or, at best, is a neutral factor.

Turning to the sixth factor, the record reflects that Defendant has at least two prior convictions for DUI, which is the same offense as charged in this case. We, therefore, conclude that the degree to which Defendant has had prior experience with the criminal justice system weighs against him.

In this case, the record does not support any factors indicating a “fair and just reason” for permitting the withdrawal of Defendant’s guilty plea. Thus, we need not consider the seventh factor regarding the potential prejudice to the State if the motion to withdraw is granted. *See Phelps*, 329 S.W.3d at 451 (stating that the potential prejudice to the prosecution factor only becomes relevant when the record shows that some of the factors indicate that there may be a “fair and just reason” to allowing the withdrawal of the guilty plea prior to sentencing); *Carter*, 2012 WL 2308293, at *9 (stating that because none of the factors examined by the court weighed in favor of the defendant, the court need not examine “the last factor regarding prejudice to the State”).

After reviewing the record and considering the factors in *Phelps*, we conclude that the trial court properly exercised its discretion in denying Defendant’s motion to withdraw his guilty plea.

Conclusion

Based upon the foregoing, we affirm the judgment of the trial court.

ROBERT L. HOLLOWAY, JR., JUDGE