

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

March 21, 2017 Session at Lincoln Memorial University¹

STATE OF TENNESSEE v. TIMOTHY LAMAR BAKER

Appeal from the Circuit Court for Blount County
Nos. C-22508, C-23660 Tammy M. Harrington, Judge

No. E2016-01332-CCA-R3-CD

The defendant, Timothy Lamar Baker, appeals the denial of his motion to withdraw his guilty plea arguing that he provided fair and just reasons in support of his motion and that the trial court failed to engage in the proper analysis. After our review of the record, briefs and applicable law, we affirm the judgment of the trial court.

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

J. ROSS DYER, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS and TIMOTHY L. EASTER, JJ., joined.

Robert White, Maryville, Tennessee, for the appellant, Timothy Lamar Baker.

Herbert H. Slatery III, Attorney General and Reporter; Courtney N. Orr, Assistant Attorney General; Mike L. Flynn, District Attorney General; and Matthew Dunn, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Facts and Procedural History

The Blount County Grand Jury indicted the defendant in case number C-22508 with one count of delivery of a schedule II controlled substance in a drug-free zone and in case number C-23660 with one count of sale or delivery of a schedule II controlled substance and one count of sale or delivery of a schedule IV controlled substance. The indictment in case number C-22508 was later amended to remove the drug-free zone

¹ Oral argument was heard in this case before law students at Lincoln Memorial University's Duncan School of Law.

enhancement. On November 9, 2015, the defendant pled guilty to all counts as charged in the indictments. As part of the negotiated plea agreement, the parties asked for sentencing to be delayed until January 2016, and the State informed the trial court that the parties would likely have an agreement on sentencing at that time; however, “if there are further problems, the understanding is that at that time we would be requesting sentencing from the Court.”

On December 28, 2015, the State filed a motion requesting revocation of the defendant’s bond because he was arrested on December 14, 2015, and subsequently charged with possession of 0.5 or more grams of cocaine, driving under the influence, and two counts of simple possession. After a hearing, the trial court revoked the defendant’s bond on March 1, 2016.

On March 4, 2016, the defendant filed a motion to withdraw his guilty plea because “the State no longer wants to continue with the [sentencing] agreement.” After a hearing, the trial court denied the defendant’s motion. Subsequently, on June 2, 2015, the trial court sentenced the defendant as a Range II offender to 10 years for delivery of a schedule II controlled substance in case number C-22508 and 10 years for sale or delivery of a schedule II controlled substance and eight years for sale or delivery of a schedule IV controlled substance in case number C-23660. The trial court also ordered the sentences in the two cases to be served consecutively for a total effective sentence of 20 years. This timely appeal followed.

Analysis

On appeal, the defendant argues that the trial court erred in denying his motion to withdraw his guilty plea because he “presented multiple fair and just reasons” in support of his motion. He also argues that the trial court “failed to engage in the appropriate required analysis.” After reviewing the record in light of the factors in *State v. Phelps*, 329 S.W.3d 436, 446 (Tenn. 2010), we conclude that, while the trial court erred in not analyzing all the *Phelps* factors, the trial court properly exercised its discretion in denying defendant’s motion to withdraw his guilty plea.

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)). “A trial court abuses its discretion when it 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)). This court held that it 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) provides:
Withdrawal of Guilty Plea.

- (1) Before Sentence Imposed. Before sentence is imposed, the court may grant a motion to withdraw a guilty plea *for any fair and just reason*.
- (2) After Sentence But Before Judgment Final. After sentence is imposed but before the 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) (emphasis added). Rule 32(f) makes it clear that “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)). 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 *State v. Turner*, 919 S.W.2d 346, 355 (Tenn. Crim. App. 1995)).

In *Phelps*, the Tennessee Supreme Court adopted the following list of factors used by the United States Court of Appeals for the Sixth Circuit in determining what constitutes “any fair and just reason” supporting the withdrawal of a guilty plea prior to sentencing:

- (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)); *see United States v. Spencer*, 836 F.2d 236, 239-40 (6th Cir. 1987). However, the court asserted that “this list of factors is not exclusive; that no single factor is dispositive; and that 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). In

addition, it stated that “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)); see *Spencer*, 836 F.2d at 240.

The *Phelps* court also held that a “change of heart” may warrant the withdrawal of a guilty plea when the balance of the factors weighs in the defendant’s favor:

Significantly, the Court of Appeals for the Sixth Circuit has emphasized that the purpose of the “any fair and just reason” standard “is to allow a hastily entered plea made with *unsure heart and confused mind* to be undone.” *United States v. Alexander*, 948 F.2d 1002, 1004 (6th Cir. 1991) (emphasis added). See also *Ellis*, 470 F.3d at 281 (“Withdrawal of a plea is appropriate where there is a real confusion or misunderstanding of the terms of the agreement.”). We hold that, where a trial court applies the correct non-exclusive multi-factor analysis and determines that the balance of factors weighs in the defendant’s favor, the trial court should allow the defendant to withdraw his plea, even if the defendant’s reasons could be characterized as a “change of heart.” We also caution trial courts, however, that a defendant should not be allowed to pervert this process into a tactical tool for purposes of delay or other improper purpose. See *Alexander*, 948 F.2d at 1004 (quoting *United States v. Carr*, 740 F.2d 339, 345 (5th Cir. 1984)).

Id. at 448.

A review of the appellate record shows that the trial court did not apply each of the factors in *Phelps*. However, because the record contains all of 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 these factors in determining whether there was “any fair and just reason” for the defendant to withdraw his guilty plea. See *id.* at 448-51 (conducting its own analysis of the factors related to the “any fair and just reason” standard after noting that the record contained evidence relevant to at least some of these factors, despite the fact that the trial court failed to conduct the proper analysis using these factors); *State v. Timothy Damon 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 of these factors after noting that the record contained all of the information presented to the trial court when it denied the motion to withdraw the guilty plea).

First, regarding the amount of time that elapsed between the plea and the motion to withdraw, the record shows that the defendant entered his guilty plea on November 9, 2015, and filed his motion to withdraw the plea on March 4, 2016, nearly four months later. Well-established precedent confirms that the length of time between the plea and the motion does not weigh in the defendant's favor. *See Phelps*, 329 S.W.3d at 449 (concluding that 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. Kevin Glenn 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"). Consequently, this factor weighs against the defendant.

Second, regarding the presence, or absence, of a valid reason for the failure to move for withdrawal of the plea earlier in the proceedings, the record shows that this factor is, at best, neutral for the defendant. During the November 9, 2015, plea hearing, the State announced,

At this time, we do contemplate we'll likely have an agreement on this, subject to your approval. If we could reset it, if there are further problems, the understanding is that at that time we would be requesting a sentence from the Court.

The defendant committed new offenses on December 14, 2015, and was served with arrest warrants for those offenses on December 15, 2015. Then, on December 28, 2015, the State filed a motion to have the defendant's bond revoked. Despite having been arrested on new charges, being on notice that the State was attempting to have his bond revoked, and knowing that any "further problems" might affect any deal he had with the State, he did not move to withdraw his guilty plea at that time. Rather, the defendant waited until March 4, 2016, to file a motion requesting to withdraw his plea. The defendant has failed to offer any reason for why he did not move to withdraw his guilty plea sooner especially after being charged with new offenses. *See State v. Ronald McMillian*, No. M2012-02491-CCA-R3-CD, 2013 WL 4082628, at *4 (Tenn. Crim. App. Aug. 14, 2013) (holding that "[t]he lack of an explanation for the lapse of time between the plea and the motion to withdraw weighs against permitting withdrawal of the plea"). Consequently, at best, this factor is neutral at best.

Third, regarding whether the defendant has asserted or maintained his innocence, the record demonstrates that the defendant agreed to an open plea which allowed him to either reach an agreement with the State that would be entered two months later or, if there were "further problems," he would be sentenced by the trial court. The defendant

also acknowledged his guilt and agreed with the State's recitation of the facts supporting his guilty plea. Furthermore, during the hearing on his request to withdraw his plea, the defendant again admitted to the underlying facts when questioned by the State. Consequently, this factor weighs against the defendant.

Fourth, regarding the circumstances underlying the entry of the guilty plea, the record shows that the defendant was represented by counsel before and during his plea. At the time he entered his guilty plea, the defendant had been informed of his rights and the potential sentences he faced. The transcript shows that the defendant never expressed any confusion during the plea submission hearing. *See Timothy Damon Carter*, 2012 WL 2308293, at *8 (stating that “[u]nlike the defendant in *Phelps*, the Defendant here never expressed any confusion or frustration about the guilty plea proceedings”). During the plea hearing, the defendant stated under oath that he understood that he was waiving his right to plead not guilty, his right to have a jury trial, his right against self-incrimination, his right to confront and cross-examine the State's witnesses, his right to call witnesses in his own behalf, his right to testify in his own behalf, and his right to appeal his conviction. He stated that he was not under the influence of any alcohol, drugs, or medication at the time he entered his plea, that no one had threatened or coerced him into entering his guilty plea, that he had discussed entering his guilty plea with his attorney, and that he was entering his plea freely and voluntarily. The defendant also stated he understood that his convictions could be used to increase or enhance his punishment in future cases. He testified defense counsel explained his potential defenses. The defendant was informed of the potential sentences he faced. He stated that he was satisfied with trial counsel's performance and did not have any questions for the trial court. Finally, the defendant acknowledged that the State's recitation of the facts supporting his guilty plea was correct before entering his open guilty plea. Consequently, this factor weighs against the defendant.

Fifth, regarding the defendant's nature and background, the record shows the defendant was forty-four years old at the time he entered his guilty plea in this case. His extensive criminal record dates back to his first offense at the age of sixteen when he pled guilty to rape and a drug offense. The defendant's presentence report shows that he was kicked out of high school in the eleventh grade. The record also reveals that the defendant has held three jobs during his adult life and has only been employed a total of four years and six months. Thus, this factor weighs against the defendant.

Sixth, regarding the degree to which the defendant has had prior experience with the criminal justice system, the presentence report shows the defendant had at least ten prior convictions and several juvenile adjudications of delinquency. The presentence report also shows the defendant has violated his probation on several occasions. The defendant's extensive experience with the criminal justice system weighs against him.

Because the record does not support any factors indicating a “fair and just reason” for permitting the withdrawal of the defendant’s guilty plea, we need not consider the seventh factor regarding the potential prejudice to the State. *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” for allowing the withdrawal of the guilty plea prior to sentencing); *Timothy Damon Carter*, 2012 WL 2308293, at *9 (holding that “[b]ecause none of the factors we have examined weigh in favor of the Defendant, we will not examine the last factor regarding prejudice to the State”). After reviewing the record in light of the non-exclusive multi-factor test in *Phelps*, we conclude the defendant failed to establish a “fair and just reason” for withdrawing his guilty plea. Accordingly, we affirm the judgment of the trial court.

CONCLUSION

The trial court erred when it failed to apply all of the factors in *Phelps* to the evidence presented. However, after reviewing the record in light of these factors, we conclude that the trial court did not abuse its discretion in denying the defendant’s motion to withdraw his guilty plea. Therefore, the judgment of the trial court is affirmed.

J. ROSS DYER, JUDGE