

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CLEVELAND COLEMAN,

Defendant-Appellant.

UNPUBLISHED

June 7, 2007

No. 269372

Saginaw Circuit Court

LC No. 01-019848-FH

Before: Davis, P.J., and Hoekstra and Donofrio, JJ.

PER CURIAM.

This case arises from defendant's failure to stop his car when police signaled for him to do so in Saginaw on December 9, 2000. In 2002, defendant pleaded guilty to fourth-degree fleeing and eluding, MCL 750.479a(2), and to being a fourth habitual offender, MCL 769.12. The trial court sentenced defendant to 30 to 180 months in prison. In 2006, defendant filed a motion to withdraw his plea, that the trial court denied. This Court granted delayed leave to appeal that decision on June 9, 2006. Because we are not persuaded by defendant's arguments on appeal, we affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that he should have been allowed to withdraw his plea because he was induced to offer it partly on the basis of false information. Appellate counsel points out that the trial court incorrectly characterized defendant's crime as a misdemeanor instead of a felony, and defendant, in his Standard 4 brief, argues that he was improperly coerced into offering his plea through the pressure of two other criminal charges that the trial court treated as still pending, when in fact those charges had been resolved.

Because defendant moved to withdraw his plea more than six months after he was sentenced, his only avenue for relief was to proceed by way of a motion to set aside or modify the judgment. MCR 6.310(C); MCR 6.502(A). Accordingly, we presume that the trial court treated the motion before it as one for relief from judgment, and we will do likewise for purposes of this appeal. Among the authorized grounds for relief from judgment is that, "in a conviction entered on a plea of guilty, . . . the defect in the proceedings was such that it renders the plea an involuntary one to a degree that it would be manifestly unjust to allow the conviction to stand." MCR 6.508(D)(3)(b)(ii).

“[A] motion to withdraw a guilty plea is addressed to the sound discretion of the trial court.” *People v Davidovich*, 463 Mich 446, 451; 618 NW2d 579 (2000). A trial court’s decision on a motion for relief from judgment is likewise reviewed for an abuse of discretion. See *People v Ulman*, 244 Mich App 500, 508; 625 NW2d 429 (2001). An abuse of discretion occurs where the trial court’s decision falls outside a principled range of outcomes. See *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

I. Characterization of the Offense

A trial court “may not accept a plea of guilty . . . unless it is convinced that the plea is understanding, voluntary, and accurate.” MCR 6.302(A). In this case, in verifying defendant’s desire to offer a plea, the trial court elicited an affirmative response when it asked, “Do you understand that you’re pleading guilty to a misdemeanor that carries with it a maximum penalty of two years in a state prison, and by acknowledging being habitual offender, fourth, the maximum penalty can, at the discretion of the Court, be increased from two years to 15 years?” It is not disputed that but for describing the crime as a misdemeanor, the trial court provided complete and accurate information concerning the sentencing possibilities the plea would bring. Defendant’s appellate counsel argues that the trial court’s inadvertent use of the label “misdemeanor” instead of the correct and more serious “felony” sufficiently misled defendant and invalidated the resulting plea.

“[T]he primary focus of plea bargaining is the determination of sentence duration.” *People v Killebrew*, 416 Mich 189, 205; 330 NW2d 834 (1982), modified in part on other grounds *People v Williams*, 464 Mich 174, 177; 626 NW2d 899 (2001). In this case, had the trial court offered no more information about possible sentences than that it was a “misdemeanor” at issue, defendant would have been misled into thinking that he could receive no sentence greater than one or two years of jail incarceration. However, the court in fact specified that defendant’s fleeing and eluding crime carried a maximum sentence of two years’ imprisonment, and that his habitual offender status increased that maximum to 15 years. It strains credulity to suggest that defendant came to the plea proceeding fully cognizant of the limitations on potential misdemeanor sentences, heard the specific sentence durations of which the trial court advised him, including the specification of “state prison” as opposed to county jail, failed to seek clarification, and then wholly disregarded the stated sentencing possibilities and instead pleaded guilty on the assumption that his sentence would fall within the normal range for a misdemeanor.

In denying the motion to withdraw the plea, the trial court acknowledged its error, but concluded that because defendant otherwise received correct information covering the consequences of the plea, including sentencing possibilities, defendant understandingly and voluntarily offered that plea. In light of all the circumstances, defendant was not seriously misled by the trial court’s use of the term “misdemeanor.” Because the trial court advised defendant of the actual sentencing consequences attendant to his guilty plea, the trial court did not abuse its discretion in finding its momentary and inadvertent mislabeling of the class of crime involved as insufficient reason to allow defendant to withdraw it.¹

¹ Further militating against providing appellate relief is that defense counsel preceded the trial
(continued...)

II. Earlier Adjudications

Defendant argues that he was coerced into offering his plea through threats connected with two other criminal adjudications that he insists should not have come into play. Defendant cites two United States Supreme Court cases that imposed some limits on the extent to which a sentencing court may consider earlier criminal charges or convictions while fashioning sentence: *United States v Tucker*, 404 US 443, 447-448; 92 S Ct 589; 30 L Ed 2d 592 (1972) (sentencing court improperly relied on earlier convictions that were constitutionally infirm), and *Townsend v Burke*, 334 US 736, 740; 68 S Ct 1252; 92 L Ed 1690 (1948) (sentencing court overrelied on earlier charges that resulted in acquittal or were dismissed).

In particular, defendant asserts that “[t]he sentencing court used the threat of applying two previously adjudicated charges in order to increase defendant’s punishment if he did not plead guilty to the [instant] charge.” Defendant specifies these other two charges as driving on a suspended license,² and operating a motor vehicle without security.³ Defendant was originally charged with those two crimes in addition to fleeing and eluding. The transcript of the plea proceeding clearly indicates that the attorneys and trial court regarded dismissal of those other counts as part of the plea agreement.

Defense counsel stated that defendant had advised him that those dismissed counts had “already been satisfied,” but that his own research had indicated otherwise. A review of the record reveals that defendant’s assertion was correct. The felony warrant initiating this case states that the crimes in question were committed on or about December 9, 2000. The presentence investigation report confirms that defendant was sentenced on December 13, 2000, for a conviction of driving on a suspended license, with an offense date of December 9, 2000. Defendant appends to his Standard 4 brief copies of judgments of sentence from the 70th District Court, dating from December 13, 2000, indicating convictions by plea and sentences of nominal fines and costs for those two charges.

It is apparent that the attorneys and trial court in this case supposed that those charges resulting in earlier adjudications were still pending, and thus treated them as bargaining chips in the instant case. Defendant’s implication that he was thus induced to plead guilty in part because he was promised dismissal of two charges that the trial court was in fact not in a position to dismiss does bring to light a “defect in the proceedings” that may have “render[ed] the plea an involuntary one.” MCR 6.508(D)(3)(b)(ii). The question is whether it was “to a degree that it would be manifestly unjust to allow the conviction to stand.” *Id.*

(...continued)

court in mischaracterizing the instant offense, calling it “a high circuit court misdemeanor.” It is possible that this led the trial court to repeat that error, bringing to bear the doctrine of invited error. “Defendant should not be allowed to assign error on appeal to something which his own counsel deemed proper at trial. To do so would allow defendant to harbor error as an appellate parachute.” *People v Roberson*, 167 Mich App 501, 517; 423 NW2d 245 (1988).

² MCL 257.904(1).

³ MCL 500.3102.

“A sentencing court is allowed to consider the facts underlying uncharged offenses, pending charges, and acquittals.” *People v Coulter*, 205 Mich App 453, 456; 517 NW2d 827 (1994). Whether the charges were dismissed, as the trial court indicated would happen, or resulted in convictions, as actually happened, the conduct underlying them properly remained within the instant court’s contemplation when fashioning sentence. We think it significant that if defense counsel misunderstood the two charges in question still to be pending, he nonetheless reported that defendant maintained—correctly as it turns out—that the charges were already resolved. Defendant apparently did not misapprehend the status of those cases, even if counsel and the court did. Moreover, the two convictions at issue were mere misdemeanors, that themselves brought to bear only nominal fines and costs, with no incarceration sentences. For these reasons, we think it unlikely that the result below would have been different had the trial court better understood, and represented, the outcome of those other charges. Accordingly, we conclude that the irregularity in question resulted in no manifest injustice, and that appellate relief is not warranted.

Affirmed.

/s/ Alton T. Davis
/s/ Joel P. Hoekstra
/s/ Pat M. Donofrio