

IN THE COURT OF APPEALS OF IOWA

No. 6-775 / 05-1710
Filed November 30, 2006

IN THE MATTER OF G.L.F., Minor Child,

G.L.F., Minor Child,
Appellant.

Appeal from the Iowa District Court for Lee (South) County, Gary R. Noneman, District Associate Judge.

A minor appeals the juvenile court's denial of his request to allow him to withdraw his plea admitting allegations of delinquency and thus overturn a delinquency adjudication and disposition. **AFFIRMED.**

Eric Tindal of Nidey, Peterson, Erdahl & Tindal, Williamsburg, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Michael P. Short, County Attorney, and David Andrusyk, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

MILLER, J.

Geoffrey appeals the juvenile court's denial of his request to allow him to withdraw his plea admitting allegations of delinquency and thus overturn a delinquency adjudication and disposition. We affirm.

In June 2005, Geoffrey, a juvenile, resided at the State Training School for Boys in Eldora. On June 28, 2005, the State filed a delinquency petition charging Geoffrey with assault with intent to commit serious injury, a Class D felony. Pursuant to a plea agreement the State reduced the charge to assault causing injury to a correctional officer, in violation of Iowa Code section 708.3A(3) (2005), an aggravated misdemeanor. Also as part of that agreement Geoffrey agreed to enter a plea at the adjudicatory hearing admitting the allegations of delinquency.

Geoffrey, his counsel, and his mother were all present at the July 26, 2005 adjudication hearing in Hardin County. At the hearing the juvenile court fully complied with the requirements of Iowa Code section 232.43. Geoffrey, who was one month short of his sixteenth birthday, in the tenth grade, represented by counsel, and accompanied by his mother, admitted the allegations of delinquency. The juvenile court entered an order finding Geoffrey's plea admitting the allegations in the petition was voluntary, a factual basis existed for the plea, Geoffrey had received effective assistance of counsel, and the plea was in Geoffrey's best interest. The court adjudicated him to have committed the delinquent act to which he had admitted.

At a dispositional hearing held in Lee County two months later, Geoffrey told the juvenile court he had not voluntarily entered the plea admitting the allegations of delinquency. He claimed he had only agreed to enter his plea

admitting to the act of delinquency because he was “kind of scared to go in front of a judge.” He claimed he did not intentionally injure the correctional officer, and had not so informed the court at the time of his plea because he was “scared to say anything.” Upon further questioning by the court Geoffrey stated that during the adjudicatory hearing he had lied about having committed the delinquent act.

In response to Geoffrey’s testimony the State argued that any challenge to the plea should have occurred in Hardin County and that Geoffrey’s belated request to withdraw his plea was not timely. Geoffrey’s counsel agreed that a motion “should have been filed earlier and probably have to be taken up in Hardin County with the judge that addressed [Geoffrey] at the time of his plea. . . .” The juvenile court ruled:

There’s absolutely no ground for overturning this adjudication. There’s no motion . . . timely filed in the matter. . . . [Geoffrey] . . . told the judge these things and the judge made a specific finding he was acting voluntarily and intelligently, he knew his rights and that there was a factual basis for his plea. Also, he’s had the benefit of a reduced charge, so I just don’t see any grounds whatsoever for overturning the adjudication.

Judge writes here specifically the child personally appeared. “The court first addressed the child personally in court and determined that the plea is voluntary and not the result of any force or threats or promises, other than promises made in connection with a plea agreement, and after informing the child of, and determining that the child understands, the following.” She lists out each and every requirement that’s required for a valid plea and made a finding. . . .

The court further noted that almost two months had passed between the adjudication and Geoffrey’s claim of an allegedly involuntary plea, and found that any attempt to withdraw the plea was untimely at that point. The court then proceeded to disposition.

The exact nature of the issue or issues Geoffrey attempts to present on appeal is somewhat difficult to ascertain. He states as the sole issue on appeal:

THE TRIAL COURT¹ ERRED IN NOT ADVISING G.L.F. OF HIS THE RIGHT TO FILE A MOTION IN ARREST OF JUDGMENT AND THE DISPOSITIONAL COURT ERRED IN FINDING THAT G.L.F. COULD NOT WITHDRAW HIS PLEA.

However, within the argument portion of his brief he states:

The issue raised by this appeal is whether the right to due process requires the court accepting an adjudication to advise the juvenile of the right to file a Motion in Arrest of Judgment.

Geoffrey argues that because the juvenile court in the adjudicatory hearing did not comply with the requirements of Iowa Rule of Criminal Procedure 2.8(2)(d) by advising him of the need to file a motion in arrest of judgment if he wished to challenge his plea, and of the consequences of not filing such a motion, he was entitled at the dispositional hearing to seek arrest of judgment or withdrawal of his plea on the ground his plea was not voluntary.

We generally review a trial court's denial of a motion to withdraw a guilty plea on an abuse of discretion standard. *State v. Kukowski*, 704 N.W.2d 687, 691 (Iowa 2005). However where, as here, a constitutional right is involved we review the issue de novo to determine whether the trial court abused its discretion. See *State v. Veal*, 564 N.W.2d 797, 809 (Iowa 1997) (holding that review of denial of a motion for mistrial grounded in claimed violation of constitutional rights is de novo to determine whether the trial court abused its discretion). Our review of a ruling on a motion in arrest of judgment is for errors at law. Iowa R. App. P. 6.4. Our scope of review in delinquency cases is

¹ Because of his later reference in the issue statement to the “dispositional court” we presume that by “trial court” Geoffrey means the juvenile court at the adjudicatory hearing.

generally de novo as well. *In re C.P.*, 569 N.W.2d 810, 811 (Iowa 1997). We review both questions of law and fact. *Id.*; Iowa Code § 232.133(1).

A plea such as Geoffrey's must of course be voluntary. Iowa Code § 232.43. By analogy to a plea of guilty in a criminal case, Geoffrey must have had a full understanding of the consequences of his plea; he must have understood the elements of the offense and the nature of the charge against him; and the important inquiry is what he, not what his attorney, understood. *See, e.g., State v. Philo*, 697 N.W.2d 481, 488-89 (Iowa 2005). Geoffrey has not claimed and does not claim that at any time he lacked the requisite understanding. Neither does he claim that the juvenile court did not fully comply with the procedural requirements set forth in section 232.43 before accepting his plea. Rather, his claim is that he lied in entering his plea, from which he concludes his plea was not voluntary and he is entitled to have it set aside.

We find it unnecessary to address questions such as whether Geoffrey in fact lied in entering his plea, whether Iowa Rule of Criminal Procedure 2.8(2)(d) has any application in a juvenile delinquency proceeding, and, if it does, whether Geoffrey's motion in arrest of judgment or motion to withdraw his plea² was timely made. This is because we reject the premise upon which his claim of involuntariness is based.

In *Commonwealth v. Pollard*, 832 A.2d 517 (Pa. Super. 2003), the defendant entered pleas of guilty to third-degree murder and other charges. In affirming the defendant's convictions and rejecting his claim his pleas should be set aside, the court noted Pennsylvania law that "a defendant may not challenge

² At some points Geoffrey characterizes his motion as one, and at other points he characterizes it as the other.

his guilty plea by asserting that [in entering the plea] he lied under oath,” *Id.* at 523, and that

[a] person who elects to plead guilty is bound by the statements he makes in open court while under oath and he may not later assert grounds for withdrawing the plea which contradict the statements he made at his plea colloquy.

Id. The court stated that a guilty plea is not invulnerable to subsequent challenge. *Id.* at 523-24. It then went on to hold:

A criminal defendant who elects to plead guilty has a duty to answer questions truthfully. We [cannot] permit a defendant to postpone the final disposition of his case by lying to the court and later alleging that his lies were induced by the prompting of counsel.

Id. at 524 (citing *Commonwealth v. Cappelli*, 489 A.2d 813, 819 (1985) (alteration in original). The court further noted that “[t]he desire of an accused to benefit from a plea bargain is a strong indicator of the voluntariness of his [guilty] plea.” *Id.*³

Geoffrey was apparently not under oath during the colloquy in which he entered his plea at the adjudicatory hearing. However, we can think of no justifiable reason for holding that this fact should place Geoffrey in a more favorable position than one who is under oath during a plea colloquy. We also note that nothing in the record suggests that if in fact Geoffrey lied during the plea proceeding any lie was induced by counsel or any other outside force. Otherwise stated, if Geoffrey in fact lied the record does not suggest that his doing so resulted from anything other than his unconstrained, personal choice to lie.

³ We do note that Geoffrey benefited from a plea bargain reducing the charge against him from a felony to a misdemeanor.

We agree with the Pennsylvania court that a lie in entering a guilty plea does not, without more, render the plea involuntary. Assuming that Geoffrey did lie in entering his plea, here there is no more. We therefore affirm the juvenile court's denial of Geoffrey's request to allow him to withdraw his plea, the adjudication of delinquency, and the dispositional order.

We have carefully considered all of the issues raised in this appeal and find that any not expressly addressed are without merit, need not be resolved in view of our resolution of the question expressly addressed, or both.

AFFIRMED.