

[CAPTION]

VERIFIED MOTION FOR WITHDRAWAL OF GUILTY PLEA

The Defendant, by counsel, respectfully requests this Court, pursuant to I.C. 35-35-1-4, to allow the Defendant to withdraw his/her previously made plea of guilty. In support of this Motion, the Defendant states the following:

1. The Defendant was originally charged with [insert offense(s)].
2. The Defendant entered a plea of guilty to [insert offense(s)] in this Court on [insert date].
3. [CHOOSE ONE: The Defendant has not been sentenced upon the plea of guilty.
OR The Defendant was sentenced on the plea of guilty on [insert date].]
4. He/she has had time to reflect on the plea of guilty and desires to withdraw the plea and to go to trial on the above charges for the following fair and just reasons:

- a. _____.
- b. _____.
- c. _____.

5. The State has not been substantially prejudiced by any reliance on the plea.
6. The withdrawal of the plea is necessary to correct a manifest injustice.

WHEREFORE, the Defendant, by counsel, respectfully requests that this Court allow the Defendant to withdraw the former plea of guilty and enter a plea of not guilty in order to correct a manifest injustice, and for all other relief just and proper in the premises.

(Signature)

VERIFICATION

I affirm, under the penalties for perjury, that the foregoing representations are true.

(SIGNATURE OF DEFENDANT)

REFERENCES

CASEBANK C.2.d

Indiana Rules of Criminal Procedure, Rule 10 (Plea of Guilty: Record to be Made)

I.C. 35-35-1-4(b) (withdrawal of plea before imposition of sentence)

I.C. 35-35-1-4(c) (withdrawal after being sentenced — when necessary to correct manifest injustice; the Motion will be treated as if it were a petition for post-conviction relief; list of basis upon which withdrawal of plea is necessary to correct a manifest injustice)

I.C. 35-35-1-4(e) (burden of proof, preponderance of evidence)

NOTE

Because a Motion to Withdraw a Guilty Plea after sentencing will be treated as if it were a Petition for Post-conviction Relief, be sure to advise the client that if another potential post-conviction issue should arise later, he would first need permission from the Indiana Supreme Court in order to raise the new issues in a successive petition for post-conviction relief. See Indiana Post-conviction Rule 1, Section 12; I.C. 35-35-1-4(c).

CASE LAW

Marshall v. State, 590 N.E.2d 627 (Ind.Ct.App. 1992) (motion to withdraw guilty plea was properly denied when the motion, although written, was unverified). See also Peel v. State, 951 N.E.2d 269 (Ind.Ct.App. 2011).

Bland v. State, 708 N.E.2d 880 (Ind.Ct.App. 1999) (Defendant's oral motion to withdraw guilty plea did not comply with requirements of the statute and Defendant failed to establish by preponderance of evidence that denial of his motion would result in manifest injustice).

Beech v. State, 702 N.E.2d 1132 (Ind.Ct.App. 1998) (trial court may, on its own motion, set aside guilty plea if the Defendant asserts his innocence after plea has been accepted but prior to sentencing).

Turner v. State, 843 N.E.2d 937 (Ind.Ct.App. 2006) (trial court erred in denying Defendant's motion to withdraw his guilty plea prior to sentencing because it was necessary to correct a manifest injustice; trial court should have granted Defendant's motion to give him a fair opportunity to vindicate his Article 1, Section 11 constitutional right against unreasonable search and seizure as enunciated in Litchfield v. State, 824 N.E.2d 356 (Ind. 2005), which represents a significant development in Indiana constitutional law).

Smith v. State, 717 N.E.2d 239 (Ind.Ct.App. 1999) (trial court erred in denying Defendant's motion to withdraw his guilty plea prior to sentencing, where plea agreement imposed illegal sentence and was therefore facially invalid).

Lineberry v. State, 747 N.E.2d 1151 (Ind.Ct.App. 2001) (although trial court is bound by terms of plea agreement that it accepts, trial court cannot be forced to provide a benefit it does not have the power to confer; here, trial court erred by not allowing Defendant to withdraw his guilty plea, which was involuntary because it was improperly induced by promise that he could appeal denial of his motion to suppress).

Trueblood v. State, 587 N.E.2d 105 (Ind. 1992) (request to withdraw guilty plea calls for examining whether plea was given truthfully and intelligently and whether request to withdraw arises out of genuine misapprehension or out of desire to manipulate).

Grant v. State, 585 N.E.2d 284 (Ind.Ct.App. 1992) (absent constitutional defect or act inconsistent with due process, plea agreements are not to be set aside when based simply upon technical failures made by trial judge in not strictly complying with statute).

Tyree v. State, 518 N.E.2d 814 (Ind.Ct.App. 1988) (statement made by Defendant to establish factual basis at guilty plea hearing is not admissible at trial if plea is withdrawn or rejected).

Douglas v. State, 663 N.E.2d 1153 (Ind. 1996) (trial court did not err in denying Defendant's request to plead guilty during trial; trial court could have been concerned that request was ruse aimed at challenging conviction later on grounds that plea was made involuntarily or unknowingly).

Rhoades v. State, 675 N.E.2d 698 (Ind. 1996) (trial court did not abuse its discretion in denying Defendant's motion to withdraw guilty plea where there was ample evidence of Defendant's guilt).

Moore v. State, 686 N.E.2d 861 (Ind.Ct.App. 1997) (trial court lacked jurisdiction to vacate Defendant's sentences and reinstate original charges after trial court accepted his guilty plea, sentenced him and transferred jurisdiction to Department of Corrections; because there has been no Indiana law which grants trial court jurisdiction over Defendant after it pronounces sentence based upon breach of plea agreement, Defendant's action of breaching plea agreement did not, by itself, give trial court jurisdiction to vacate Defendant's convictions and sentences and to reinstate original charges).

Ivy v. State, 861 N.E.2d 1242 (Ind.Ct.App. 2007) (manifest injustice not created where Defendant plead guilty to 100-year cumulative sentence, in return for dismissal of all remaining counts, where State failed to dismiss remaining counts including four death penalty counts until long after when Defendant filed a motion to dismiss; although State did not dismiss the remaining counts, it did not prosecute Defendant on them, nor did it oppose Defendant's motion to dismiss those charges).

Mendoza v. State, 869 N.E.2d 546 (Ind.Ct.App. 2007) (when prosecutor moved to dismiss charges, plea agreement was not a binding contract because it had not yet been accepted by trial court, thus either party could move to withdraw from agreement).

State v. Cozart, 897 N.E.2d 478 (Ind. 2008) (post-conviction court erred in vacating Defendant's conviction based on trial court's failure to advise that the minimum sentence was non-suspendible; generally speaking, if a trial court undertakes the steps dictated by statute, a post-conviction petitioner will have a difficult time overturning his guilty plea on collateral attack; however, defendants who can prove that they were actually misled by the judge, the prosecutor, or defense counsel about the choices before them will present colorable claims for relief).

Milian v. State, 994 N.E.2d 342 (Ind.Ct.App. 2013) (generally, a defendant is not allowed to challenge a guilty plea on direct appeal once judgment is entered, but must pursue post-conviction relief instead; however, where a defendant has sought to withdraw his guilty plea prior

to sentencing, and the trial court hears evidence on the motion, reviews the claim, and rejects it, the defendant may present the challenge on direct appeal).

Gross v. State, 22 N.E.3d 863 (Ind.Ct.App. 2014) (trial court's refusal to allow Defendant to withdraw his guilty plea did not constitute manifest injustice, despite Defendant's contention that he did not fully comprehend that consecutive sentences were possible).

Jeffries v. State, 966 N.E.2d 772 (Ind.Ct.App. 2012) (no abuse of discretion in denying withdrawal of plea where one habitual charge was invalid because other habitual charge was valid and potential sentence on that habitual count and other charges could have exceeded 40-year sentence defendant received by pleading guilty).