

**ARKANSAS COURT OF APPEALS**

DIVISION III  
No. CACR09-839

CALVIN BROWN

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** February 17, 2010

APPEAL FROM THE CROSS  
COUNTY CIRCUIT COURT  
[NO. CR-2008-67]

HONORABLE RICHARD L.  
PROCTOR, JUDGE

AFFIRMED

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**LARRY D. VAUGHT, Chief Judge**

Calvin Brown appeals the judgment and commitment order entered by the Cross County Circuit Court, wherein he pled guilty and was sentenced to ten years' imprisonment. On appeal, Brown argues that the trial court erred in denying his motion to withdraw the plea. We affirm.

On Wednesday, March 18, 2009, Brown appeared before the trial court and advised that he wished to plead guilty to delivery of a controlled substance, a class Y felony. The trial court immediately began questioning Brown in an effort to confirm that Brown understood the nature of the charges against him, the sentencing range those charges carried, and the rights he was giving up by pleading guilty. Midway through the questioning, the trial court stated, "Alright, it's the finding and judgement [sic] of the Court that your plea of guilty is knowingly, voluntarily, and intelligently entered and will be accepted by the Court." The trial



Cite as 2010 Ark. App. 148

court continued questioning Brown, confirming that he understood the terms of his plea agreement. During this line of questioning, the State advised the court that the recommended sentence was ten years' imprisonment. When the trial court asked Brown if he understood the recommended sentence, the following exchange took place:

BROWN: Well, I thought, this, this charge was doing time – I just got out of the pen in December.

THE COURT: Okay.

BROWN: And that, we, I was under the understanding that they were going to be running concurrent with that charge that I had.

. . . .

THE COURT: You understand now that that is not the case?

BROWN: Yes, sir.

THE COURT: Okay. So you understand what the recommendation was going to be?

BROWN: Yes, sir.

THE COURT: Okay. And do you have any questions about it?

BROWN: No, sir. Nothing, but I didn't, I still don't understand why they wasn't run concurrent.

THE COURT: Well, because it didn't recommend that. That was not a part of your, what they had told me was your plea bargain. Now, do you understand that now?

BROWN: Yes, sir.

THE COURT: Alright, then your sentence will be imposed, ten (10) years will be imposed Monday morning at nine o'clock.

On Monday, March 23, 2009, Brown appeared before the court, and his counsel



Cite as 2010 Ark. App. 148

moved to withdraw the guilty plea. Brown's counsel argued that, under Rule 26.1 of the Arkansas Rules of Criminal Procedure, Brown had an absolute right to withdraw his plea before it was accepted by the trial court. He also argued that the court may permit withdrawal of the plea after it has been accepted but before sentencing has been imposed. The trial court denied the motion, and Brown filed this appeal.

Brown first argues that the trial court violated his absolute right to withdraw his guilty plea pursuant to Rule 26.1(a) of the Arkansas Rules of Criminal Procedure. This rule provides that "[a] defendant may withdraw his or her plea of guilty or nolo contendere as a matter of right before it has been accepted by the court." Ark. R. Crim. P. 26.1(a). Based on this rule, we reject Brown's argument because it is clear from the hearing transcript set forth above that the trial court expressly accepted the guilty plea on March 18, 2009. Furthermore, at the subsequent hearing on Brown's motion to withdraw his guilty plea, the trial court expressly stated that the plea was accepted; that it would not have set a hearing for sentencing had it not accepted the plea; and that it wrote, "plea of guilty," in its docket book. Accordingly, we hold that Brown's first argument lacks merit, and we affirm on this point.

Brown's alternative argument is that if the plea had been accepted, the trial court had the discretion to withdraw it to prevent a manifest injustice. He contends the record demonstrates that he was confused about the plea sentence. Here, Brown relies on Rule 26.1(b)(iv) of the Arkansas Rules of Criminal Procedure, which provides that the withdrawal of a plea of guilty shall be deemed to be necessary to correct a manifest injustice if the



defendant proves to the satisfaction of the court that he did not receive the sentence concessions contemplated by a plea agreement and the prosecuting attorney failed to seek or not to oppose the concessions as promised in the plea agreement. Ark. R. Crim. P. 26.1(b)(iv). Therefore, on this point, we must determine whether the trial court abused its discretion in refusing to allow Brown to withdraw his guilty plea. *Green v. State*, 362 Ark. 459, 462, 209 S.W.3d 339, 341 (2005).

The transcript of the plea hearing shows that Brown was well-advised that his recommended sentence was ten years' imprisonment. Brown responded affirmatively when the court inquired if the signature on the guilty-plea agreement was his. The plea statement includes the notation, "10 yrs. ADC-CTS sentence to be imposed 3-23-09." He answered affirmatively when asked if he understood his plea and if he had reviewed it with his attorney. On the record, the State recommended a ten-year sentence. And while Brown did voice some confusion about the recommended sentence, the trial court specifically explained to Brown what was stated on the plea statement and reiterated the sentence the State was recommending. After doing that, the trial court again asked Brown if he understood the recommended sentence, to which Brown answered, "Yes." Ultimately, the trial court imposed the recommended sentence. Because the record demonstrates that Brown received the sentence concession contemplated by his plea agreement and that the prosecuting attorney sought that same sentence, we hold that there was no manifest injustice and that the trial court did not abuse its discretion by denying Brown's motion to withdraw his guilty plea.

Affirmed.

KINARD and GRUBER, JJ., agree.

*Terry Goodwin Jones*, for appellant.

*Dustin McDaniel*, Att'y Gen., by: *Rachel M. Hurst*, Ass't Att'y Gen., for appellee.