IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CRIMINAL): AC
CASE NO.: 502019AP000036AXXXMB
L.T. NO.: 502018MM004503AXXXSB

CARMEN ANN SANCHEZ-HYMAN,
Appellant,

v.

STATE OF FLORIDA,
Appellee.
_____/

Opinion filed: April 27, 2020

Appeal from the County Court in and for Palm Beach County,
Judge Bradley Harper.

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PER CURIAM.

Appellant, Carmen Sanchez-Hyman, appeals the trial court's order denying her motion to withdraw plea after sentencing. Appellant specifically argues that the trial court erred by denying her motion without holding an evidentiary hearing and failing to appoint conflict-free counsel before ruling on her motion. We agree.

Appellant was charged with and proceeded to trial for five counts of cruelty to animals. During voir dire, defense counsel informed the court that Appellant was "having a major panic attack" and asked for a short recess. After a ten-minute break, defense counsel informed the court that Appellant was having a semi-nervous breakdown and wanted to plea to resolve the case. The court then dismissed the jury and proceeded to conduct a plea colloquy.

During the plea colloquy, the trial court asked Appellant: "Have you had an opportunity to discuss this plea and its consequences with your lawyer? Have you talked, discussed the plea with your lawyer?" Appellant answered yes. Appellant then asked the court about obtaining a lawyer and expressed concern about not wanting to spend the night in jail. Appellant had not been in custody the day before trial but was taken into custody after having arrived late to her trial. Appellant engaged the court as follows:

> [APPELLANT]: If I need time to either represent myself pro se or obtain a lawyer, do I have that time or is it not way?
>
> [THE COURT]: You did, I'm gonna interpret your question as asking me, are you required to enter a plea of guilty today, no, you are not required. We can reset your case for another day. . . .
>
> . . .
>
> [APPELLANT]: But I wouldn't be able to prepare [for trial] if I'm gonna go to jail tonight?
>
> [THE COURT]: Well, you're here for trial now, you should be prepared. But you'll be able to prepare and do what you need to do, do what you need to do for trial. The question is very simple, Ms. Hyman, if you need more time to talk to your attorneys, I will reset the case for tomorrow. The question for you today is, whether or not you want to enter a plea of guilty to this case[.]
>
> [APPELLANT]: Okay. My one last question is if I will be taken—my concern right now and having panic is because the—I was locked up, I was handcuffed and I'm being told I'm going [to spend the night in jail]

. . .

[THE COURT]: Ma'am, what's the question?

[APPELLANT]: Am I going . . . to jail tonight?

[THE COURT]: Yes. You are in custody as we speak.

[APPELLANT]: So there is no option there. So this is the only way.

[COUNSEL]: So what his question is, is that you're pleading guilty? Because if you're not entering a plea of guilty to the Court and asking him to sentence him, in fact, yes, you will be remanded, yes, you can prepare for trial from the custody of the Palm Beach County Jail. But he will not release you to prepare for trial. It's your choice how you want to proceed but those are your, those are the outcomes. So, the question now is, if the judge can continue with is [sic] colloquy?

[APPELLANT]: Okay. Continue.

[THE COURT]: All right. Given all that's been said, I need to know whether or not you wish to enter a guilty plea to the charges?

[APPELLANT]: Yes.

Appellant went on to state that she understood that by taking the plea she was giving up her right to a jury trial and her right to call witnesses. Appellant also indicated that she was not under the influence of drugs, alcohol, or medication. Appellant then stated that she was "misunderstanding something" and thought that the plea colloquy was a trial. The following exchange then occurred:

[COUNSEL]: . . . The question is, is each charge is a first degree misdemeanor, do you understand that? Answer yes or no.

[APPELLANT]: Yes.

[COUNSEL]: Okay. Each charge—

[TRIAL COURT]: All right. Let me, let me go ahead. You understand that each charge is a first degree misdemeanor, is that correct, ma'am?

[APPELLANT]: Yeah.

. . .

[APPELLANT]: Is this like a trick or something?

[COUNSEL]: No, no, [Appellant], listen.

[APPELLANT]: It's been four years of this.

[COUNSEL]: [Appellant], listen, this part's not applying to you. This is the general law. This isn't your sentence. But he needs to know that you understand that the charge is punishable by one year in the county jail?

[APPELLANT]: Yeah.

[COUNSEL]: Okay. And since you have five charges the maximum penalty could be five years, not that it is going to be five years, do you understand that?

[APPELLANT]: Yup, yes.

The court then asked, "Is anyone forcing you to accept this plea?" to which Appellant responded no. The court accepted the guilty plea and found that Appellant pleaded freely and voluntarily. The court then sentenced Appellant to one year of probation on each count and imposed other conditions.

Thirty days later, Appellant moved to withdraw her plea and appoint conflict-free counsel. In her motion, Appellant alleged that her plea was involuntary because her thought process during the plea colloquy was affected by an ongoing anxiety attack and that she had an adversarial relationship with her defense attorney. In support of her motion, Appellant attached several mental health evaluation reports created during the course of her criminal proceedings. The trial court summarily denied Appellant's motion.

Florida Rule of Criminal Procedure 3.170(*l*) allows a defendant to file a motion to withdraw his or her plea within thirty days after sentencing. The motion must be based on one of

the grounds specified in Florida Rule of Appellate Procedure 9.140, which includes a plea entered involuntarily. Fla. R. Crim. P. 3.170(*l*); Fla. R. App. P. 9.140(b)(2)(A)(ii)(c). In a motion to withdraw a plea after sentencing, a defendant must prove that a manifest injustice has occurred, such as "where the defendant proves that he received ineffective assistance of counsel or where the defendant's plea was involuntary." *Nelfrard v. State*, 34 So. 3d 221, 222 (Fla. 4th DCA 2010). The allegations in the motion must be facially sufficient, that is, they must be supported by a factual basis and not be conclusory. *Saintiler v. State*, 109 So. 3d 303, 305 (Fla. 4th DCA 2013). If the motion is facially sufficient, the defendant is entitled to an evidentiary hearing unless the record conclusively refutes the allegations. *Hall v. State*, 72 So. 3d 290, 292-93 (Fla. 4th DCA 2011).

A defendant who enters a guilty plea voluntarily must understand the consequences of the plea, "and a trial court must carefully inquire into the voluntariness of the plea." *Stinson v. State*, 839 So. 2d 906, 908 (Fla. 5th DCA 2003). "The voluntariness of the plea is determined by considering the relevant surrounding circumstances." *Id.* We review an order denying the withdrawal of a plea under an abuse of discretion standard. *Id.*

Appellant timely filed a rule 3.170(*l*) motion to withdraw her plea. In her motion, Appellant sufficiently alleged that her plea was involuntary because she was experiencing anxiety and a panic attack that affected her thought process during the plea colloquy. Although the trial court asked Appellant whether she had discussed the plea with her attorney and whether anyone was forcing her to plead guilty, the trial court failed to consider the relevant surrounding circumstances to determine the voluntariness of the plea. Appellant experienced a panic attack and, only after a brief recess, pled guilty. During the colloquy, Appellant's questions and responses demonstrated that she did not fully understand the proceedings. Indeed, at one point, Appellant expressly stated that she was "misunderstanding something" and asked whether she was in a trial. While the trial court

explained the type of charges in her case, Appellant asked if the colloquy was "a trick or something." The trial court failed to carefully inquire as to her state of mind during the colloquy. Additionally, the record indicates that Appellant's mental health had been evaluated numerous times and that there had been questions about her competency. Because Appellant's claim was facially sufficient and the record does not conclusively refute her allegation that her thought process was compromised, we hold that the trial court should have held an evidentiary hearing to determine the voluntariness of the plea.

Appellant also contends that the trial court erred by failing to appoint conflict-free counsel before ruling on the motion to withdraw plea as Appellant alleged an adversarial relationship with her attorney. Because the State concedes this error, we also conclude that the trial court should have appointed conflict-free counsel before considering Appellant's motion to withdraw plea.

Based on the foregoing, we **REVERSE** and **REMAND**, instructing the trial court to appoint conflict-free counsel and hold an evidentiary hearing on Appellant's motion to withdraw plea.

KROLL, SHEPHERD, and SCHER, JJ., concur.

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Opinion/Decision filed: April 27, 2020

Appeal from County Court in and for
Palm Beach County, Florida;
Judge Bradley Harper.

Appealed: March 8, 2019

DATE OF PANEL: FEBRUARY 11, 2020

PANEL JUDGES: KROLL, SHEPHERD, SCHER

AFFIRMED/REVERSED/OTHER: REVERSED AND REMANDED

PER CURIAM OPINION/DECISION BY: PER CURIAM

CONCURRING:	DISSENTING: With/Without Opinion	CONCURRING SPECIALLY: With/Without Opinion
/s/ Kathleen Kroll	_____	_____
DATE: 4/24/2020 J.	J.	J.
/s/ Caroline Shepherd	_____	_____
DATE: 4/24/2020 J.	J.	J.
/s/ Rosemarie Scher	_____	_____
DATE: 4/24/2020 J.	J.	J.