IN THE COURT OF APPEALS OF THE STATE OF ALASKA

JEFFREY RICHARD BEILEN, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-12209 Trial Court No. 3PA-13-2313 CR MEMORANDUM OPINION No. 6644 — June 20, 2018

Appeal from the Superior Court, Third Judicial District, Palmer, Kari Kristiansen, Judge.

Appearances: Glenda Kerry, Law Office of Glenda J. Kerry, Girdwood, for the Appellant. Elizabeth T. Burke, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Jahna Lindemuth, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, and Allard and Wollenberg, Judges.

Judge WOLLENBERG.

Jeffrey Richard Beilen entered into a plea bargain with the State, agreeing to plead guilty to third-degree assault with sentencing open to the court. Consistent with Alaska Criminal Rule 11, the superior court engaged Beilen in a colloquy regarding his change of plea. The court ultimately accepted Beilen's plea, finding it knowing and

voluntary. At a subsequent hearing, following the preparation of a presentence report, the court imposed sentence.

Beilen now appeals, arguing for the first time that the plea inquiry was deficient. In particular, Beilen argues that after he informed the court during the colloquy that he was taking medication, the superior court violated his due process rights by failing to *sua sponte* inquire into the types of medications he was taking and any medical evaluations Beilen had undergone. Beilen contends that this purported inadequacy renders his plea involuntary per se, entitling him to reversal of his conviction.

We disagree. As an initial matter, we question whether this claim is cognizable for the first time on direct appeal. We note that even if we agreed with Beilen that the plea inquiry was deficient, he would not be entitled to withdraw his plea. Rather, we would remand this case for a hearing to determine the facts — facts such as what medication Beilen was taking at the time he entered his change of plea and whether that medication, in the dosage taken, affected Beilen's mental state sufficiently to render his plea involuntary.[1]

Because further information is required to evaluate Beilen's claim, this appears to be the type of claim that must first be litigated through a trial court motion to withdraw the plea, or through a post-conviction relief application.[2]

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[1] *See* Alaska R. Crim. P. 11(h)(3) ("A defendant requesting post-sentence plea withdrawal must prove that withdrawal is necessary to correct a manifest injustice."); *see also United States v. Damon*, 191 F.3d 561, 564-66 (4th Cir. 1999) (remanding for an inquiry into whether the medication the defendant was taking at the time of his plea had the ability to affect his mental state sufficiently to render his plea involuntary); *United States v. Parra-Ibanez*, 936 F.2d 588, 596-98 (1st Cir. 1991) (same).

[2] *See* Alaska R. Crim. P. 11(h); *see also Gordon v. State*, 577 P.2d 701, 704-05 (Alaska (continued...)

We need not definitively resolve this threshold question because, having reviewed the record of Beilen's change-of-plea hearing, we are satisfied that the trial court sufficiently and meaningfully questioned Beilen before determining that his plea was knowing and voluntary. When Beilen indicated that he was on medication, the court asked proper follow-up questions, obtaining repeated assurances from Beilen directly that the medication did not impact his clear-headedness.

We note that there is a significant body of law in this area, very little of which Beilen discusses.[3] Under that law, the fundamental question is generally whether the plea colloquy raised questions about the defendant's mental state and capacity to understand the proceedings that objectively necessitated further inquiry by the judge. A court need not invariably inquire into the specific type and dosages of a defendant's medications.[4] Rather, the court may be better able to assess whether a drug is impairing a defendant's understanding of the proceedings "by interacting with the defendant himself, by asking him questions concerning his mental state and ability to understand the procedures, and then weighing both the content of the responses offered as well as the demeanor and general coherence of the defendant that can be gleaned from his responses."[5]

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[2] (...continued)
1978) (deciding, under an earlier version of Criminal Rule 11, that a defendant may not challenge the voluntariness of his plea without first filing a motion to withdraw the plea in the trial court).

[3] *See State v. Kaulia*, 291 P.3d 377, 385-88 (Haw. 2013) (collecting cases).

[4] *See, e.g.*, *United States v. Mejía-Encarnación*, 887 F.3d 41, 45-46 (1st Cir. 2018); *Oliver v. State*, 147 P.3d 410, 412-14 (Utah 2006).

[5] *Oliver*, 147 P.3d at 413; *see also Weeks v. State*, 341 S.W.3d 701, 704 (Mo. App. 2011) ("The mere ingestion of drugs is insufficient to render a person incapable of pleading (continued...)

Here, there are no indications in the record that additional follow-up, particularly of the probing nature Beilen proposes, was required or even warranted. First, the court's larger colloquy with Beilen regarding his plea corroborated Beilen's assurances of clear-headedness. Beilen asked appropriate questions of the court about the plea agreement and the rights he was relinquishing, and the court repeatedly ensured that Beilen wished to plead guilty.

Second, even after a brief consultation with Beilen during the hearing, Beilen's attorney did not express any concerns about Beilen's understanding of the proceedings. And when given the opportunity, neither Beilen's attorney nor the prosecutor asked for further inquiry of Beilen on any topic. At no time, either at the change-of-plea hearing or before filing this appeal, did defense counsel raise this issue or move to set aside Beilen's plea.

Accordingly, we conclude that the trial court did not err, let alone plainly err, in its questioning of Beilen.[6]

Beilen notes that the presentence report contained additional information about his medical history. But the presentence report was prepared after the change-of-

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[5] (...continued)
guilty, and the recent ingestion of a drug does not invalidate a plea of guilty where the ability of the defendant to understand and give free assent to the conviction remain unimpaired.").

[6] *See United States v. Savinon-Acosta*, 232 F.3d 265, 269 (1st Cir. 2000) (holding plea inquiry sufficient where the court conducted an extensive colloquy, and the defendant assured the court of his clearheadedness, recognizing that courts commonly rely on the defendant's own assurances and assurances from counsel regarding the defendant's state of mind as well as the defendant's own performance in the course of the plea colloquy); *United States v. Dalman*, 994 F.2d 537, 538-39 (8th Cir. 1993) (trial court was not required to further inquire where the defendant, though unable to tell the court the names of the drugs he was taking, confirmed he understood what was happening, and his performance during the plea colloquy confirmed that assertion).

plea hearing for use at sentencing, and it contains no indication that, at the time of his plea, Beilen was taking the type of medication that would have affected his mental capacity. Moreover, Beilen's attorney did not thereafter question the voluntariness of Beilen's prior plea or raise any concerns at the sentencing hearing about Beilen's mental state. To the contrary, Beilen's attorney made positive statements about Beilen's health at both a subsequent bail hearing and at sentencing.

To the extent Beilen has evidence that he was on medication that actually impaired his understanding of the plea proceedings so as to render his plea unknowing or involuntary, he may pursue that claim in a post-conviction relief proceeding.[7]

We AFFIRM the judgment of the superior court.

[7] Alaska R. Crim. P. 11(h)(3).