IN THE CIRCUIT COURT FOR THE
NINETEENTH JUDICIAL CIRCUIT IN AND
FOR ST LUCIE COUNTY, FLORIDA.
APPELLATE DIVISION

Circuit Case No. 18-AP-26
Lower Tribunal No. 17-MM-228
18-MM-1823

JOE BOY ALBRITTON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.
_____/

Not final until time expires for filing motion for rehearing, and if filed, disposed of.

Decision filed November 13, 2019.

Appeal from the County Court for St. Lucie County; Daryl Isenhower, Judge.

Paul O'Neil, Office of Criminal Conflict and Civil Regional Counsel, Fourth District, West Palm Beach, for appellant.

Bruce Colton, State Attorney, and Rebecca White, Assistant State Attorney, Fort Pierce, for appellee.

LINN, J.

Joe Boy Albritton appeals the trial court's denial of his motion to withdraw plea. The Appellant argues that his plea was coerced, and there was no factual basis for the resisting officer without violence. We affirm the trial court's denial of his motion to withdraw plea.

The standard of review for a denial of a motion to withdraw plea is an abuse of discretion. *Ingraham v. State*, 248 So. 3d 153, 154 (Fla. 4th DCA 2018).

The Appellant claims that his plea was coerced. At the time of the plea he was asked, "you wanna (sic) do this?" and he responded "yes." At the time of the motion to withdraw plea, he was asked about what about the plea is coercive and he responded, "It's not that that (sic) is coercive, ma'am …" and then went on to complain about the factual basis. In order for us to find that the Appellant was coerced, we are left with defining "yes" to mean "no" and "not coercive" to mean

"coercive." The trial court accepted the Appellant's answers at face value. We agree with the trial court's interpretation.

The Appellant claims that *Johnson v. State* requires the trial court to 1) require all defendants to complete a written plea form and 2) ask all defendants if they were induced by coercion, threats, or promises at all plea colloquies. 22 So. 3d 840 (Fla. 1st DCA 2009). In *Johnson*, a written plea form and the judge's colloquy was used as evidence to rebut coercion, but the First District Court of Appeal did not require such evidence in all cases. *Id*. The record in the instant case refutes the Appellant's coercion claim.

The Appellant also argues that there was no factual basis for the entry of the plea to the resisting officer without violence. At the time of the entry of the plea, the trial court stated "…I've read ah, both the arrest affidavit….for the resisting and violation file here, so I find the facts support it." The record contained the arrest affidavit and the violation of probation affidavit. Therefore, there is a factual basis for the plea.

The requirements of a plea colloquy are outlined in Fla. R. Crim. P. 3.172. The court must determine whether the plea was done knowingly, intelligently, and voluntarily. No verbatim recantation of a colloquy or written form is required. Even if the plea colloquy is insufficient under the rule, the Appellant must show that he was prejudiced.

Fla. R. Crim. P. 3.172(j) states: "failure to follow any of the procedures in this rule **shall not** render a plea void absent a showing of prejudice." In order to establish prejudice, the Appellant must show that he would have gone to trial rather than enter a plea but for the lack of a factual basis or coercion. *Carruthers v. State*, 42 So.3d 337, 339 (Fla. 4th DCA 2010). There is absolutely no evidence from the Appellant establishing that he was prejudiced in any way.

Therefore, we conclude that the trial court did not abuse its discretion.

Affirmed.

CROOM, J. and MORGAN, Acting Circuit Judge, concur.

Copies of above decision
were furnished to the attorneys/parties
of record on the same date
the decision was filed.