

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	No. 20AP-302
Plaintiff-Appellee,	:	(C.P.C. No. 18CR-3061)
v.	:	
	:	(ACCELERATED CALENDAR)
Josue Montelongo-Rangel,	:	
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on December 3, 2020

On brief: *Ron O'Brien*, Prosecuting Attorney, and *Daniel J. Stanley*, for appellee.

On brief: *Josue Montelongo-Rangel*, pro se.

APPEAL from the Franklin County Court of Common Pleas

LUPER SCHUSTER, J.

{¶ 1} Defendant-appellant, Josue Montelongo-Rangel, pro se, appeals from a decision and entry of the Franklin County Court of Common Pleas denying his motion to vacate or set aside judgment. For the following reasons, we affirm.

I. Facts and Procedural History

{¶ 2} By indictment filed June 26, 2018, plaintiff-appellee, State of Ohio, charged Montelongo-Rangel, along with seven other codefendants, with one count of engaging in a pattern of corrupt activity, in violation of R.C. 2923.32, a first-degree felony; one count of trafficking in marijuana, in violation of R.C. 2925.03, a second-degree felony; two counts of trafficking in cocaine, in violation of R.C. 2925.03, first-degree felonies; one count of trafficking in marijuana, in violation of R.C. 2925.03, a fourth-degree felony; and one count

of receiving proceeds of an offense subject to forfeiture proceedings, in violation of R.C. 2927.21, a third-degree felony. Five of the counts contained accompanying one-year firearm specifications, and two of the counts contained forfeiture specifications for the \$509,373 in currency seized following an execution of a search warrant. The indictment related to conduct occurring between December 18, 2017 and June 16, 2018. The case number in the trial court for this first indictment was Franklin C.P. No. 18CR-3061. Montelongo-Rangel initially entered a plea of not guilty.

{¶ 3} Subsequently, Montelongo-Rangel appeared with counsel on June 18, 2019 and entered a plea of guilty to one count of engaging in a pattern of corrupt activity and one count of trafficking in cocaine in case No. 18CR-3061. That same day, Montelongo-Rangel also entered a guilty plea in Franklin C.P. No. 19CR-2312 to one count of trafficking in cocaine relating to a separate indictment the state filed May 10, 2019. The trial court accepted Montelongo-Rangel's guilty pleas in both cases, found Montelongo-Rangel guilty, and imposed the mandatory required prison sentence of 11 years for the engaging in a pattern of corrupt activity, concurrent to a mandatory 3 years for the trafficking in cocaine offense in case No. 18CR-3061, and the trial court ordered that sentence to run consecutive to the 3-year prison sentence it imposed for trafficking in cocaine in case No. 19CR-2312, for a total aggregate sentence of 14 years in prison. Montelongo-Rangel did not file a timely direct appeal of his conviction or sentence in case No. 18CR-3061.

{¶ 4} On October 2, 2019, Montelongo-Rangel filed a pro se motion to vacate or set aside judgment. Montelongo-Rangel argued in his motion that the issuance of the search warrant leading to his indictment was erroneous because the Franklin County Municipal Court lacked jurisdiction to issue the warrant. The state opposed Montelongo-Rangel's motion, arguing the legality of the warrant is irrelevant because Montelongo-Rangel's conviction was pursuant to a guilty plea, not pursuant to the search warrant. Montelongo-Rangel filed a reply to the state's memorandum in opposition on October 18, 2019 arguing the trial court did not have subject-matter jurisdiction over Montelongo-Rangel pursuant to his theory that the search warrant was issued in the wrong jurisdiction and the indictment filed pursuant to the search warrant was void ab initio. Montelongo-Rangel filed this motion only in case No. 18CR-3061.

{¶ 5} Montelongo-Rangel then filed a duplicate motion to vacate or set aside judgment on October 30, 2019, making the same arguments as he did in his October 2, 2019 motion. The state filed a memorandum contra on November 1, 2019, and Montelongo-Rangel filed a reply on November 26, 2019.

{¶ 6} While his motion to vacate was still pending, Montelongo-Rangel filed a February 18, 2020 motion for summary judgment or, in the alternative, request for an oral hearing related to his motion to vacate. Additionally, Montelongo-Rangel filed an untimely notice of appeal of his conviction in case No. 18CR-3061 in this court on February 21, 2020. This court denied Montelongo-Rangel's motion for leave to file a delayed appeal in a June 30, 2020 memorandum decision. *State v. Montelongo-Rangel*, 10th Dist. No. 20AP-114. Montelongo-Rangel also filed a pro se writ of mandamus in this court on April 8, 2020. The magistrate recommended dismissal of Montelongo-Rangel's mandamus complaint in an April 14, 2020 magistrate's decision. *State ex rel. Montelongo-Rangel v. Franklin Cty. Court of Common Pleas*, 10th Dist. No. 20AP-205. Montelongo-Rangel filed objections to the magistrate's decision on May 11, 2020, and the matter is still pending.

{¶ 7} On May 1, 2020, Montelongo-Rangel filed a pro se petition for postconviction relief or, in the alternative, a motion to withdraw his plea pursuant to Crim.R. 32.1. The state filed a reply on May 20, 2020.

{¶ 8} Ultimately, on May 13, 2020, the trial court issued a decision and entry denying Montelongo-Rangel's motion to vacate or set aside judgment and denying as moot his motion for summary judgment or, alternatively, requesting an oral hearing. The trial court construed Montelongo-Rangel's motion as a post-sentence motion to withdraw a guilty plea under Crim.R. 32.1. Finding Montelongo-Rangel did not demonstrate he is entitled to withdraw his guilty plea, the trial court denied Montelongo-Rangel's motion to vacate or set aside the judgment of his conviction. Montelongo-Rangel timely appeals.

II. Assignment of Error

{¶ 9} Montelongo-Rangel assigns the following error for our review:

The Franklin County Common Pleas Court erred by denying Defendant-Appellant's Motion to Vacate because the judgment was void ab initio.

III. Analysis

{¶ 10} In his sole assignment of error, Montelongo-Rangel argues the trial court erred in denying his motion to vacate the judgment of his conviction. The trial court construed his motion as a post-sentence motion to withdraw his guilty plea, and we similarly review it as a post-sentence motion to withdraw his plea. *See, e.g., State v. Schlee*, 117 Ohio St.3d 153, 2008-Ohio-545, ¶ 12 (noting courts have discretion to "recast irregular motions into whatever category necessary to identify and establish the criteria by which the motion should be judged").

{¶ 11} Pursuant to Crim.R. 32.1, a "motion to withdraw a plea of guilty or no contest may be made only before sentence is imposed; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his or her plea." Thus, a trial court may allow a post-sentence withdrawal of a guilty plea only to correct a manifest injustice. *State v. Morris*, 10th Dist. No. 19AP-152, 2019-Ohio-3795, ¶ 11. A defendant seeking a post-sentence withdrawal of a guilty plea bears the burden of establishing the existence of a manifest injustice. *Id.*, citing *State v. Morgan*, 10th Dist. No. 12AP-241, 2012-Ohio-5773, ¶ 11. The term "[m]anifest injustice relates to some fundamental flaw in the proceedings which result[s] in a miscarriage of justice or is inconsistent with the demands of due process." *Morgan* at ¶ 10, quoting *State v. Williams*, 10th Dist. No. 03AP-1214, 2004-Ohio-6123, ¶ 5.

{¶ 12} The decision to grant or deny a motion to withdraw a guilty plea made under Crim.R. 32.1 rests within the sound discretion of the trial court, and we will not disturb that decision on appeal absent an abuse of discretion. *Morris* at ¶ 12, citing *Morgan* at ¶ 11. An abuse of discretion connotes a decision that is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 13} "It is well-established that res judicata bars claims raised in a Crim.R. 32.1 postsentence motion to withdraw a guilty plea that were raised or could have been raised in a prior proceeding such as a direct appeal." *Morris* at ¶ 13; *State v. Taylor*, 10th Dist. No. 19AP-795, 2020-Ohio-4581, ¶ 12 ("[t]his court has consistently applied res judicata to bar a defendant from raising issues in a post-sentence Crim.R. 32.1 motion that were or could have been raised on direct appeal"), citing *State v. Mobley*, 10th Dist. No. 18AP-23, 2018-Ohio-3880, ¶ 14, citing *State v. Ikharo*, 10th Dist. No. 10AP-967, 2011-Ohio-2746,

¶ 11. " 'Under the doctrine of res judicata, a final judgment of conviction bars a convicted defendant who was represented by counsel from raising and litigating in any proceeding except an appeal from that judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant at the trial, which resulted in that judgment [of] conviction, or an appeal from that judgment.' " (Emphasis omitted.) *State v. Cole*, 2 Ohio St.3d 112, 113 (1982), quoting *State v. Perry*, 10 Ohio St.2d 175 (1967), paragraph nine of the syllabus.

{¶ 14} As the trial court noted, the proper remedy for Montelongo-Rangel's arguments related to deficiencies in the search warrant would have been a timely filed motion to suppress. However, Montelongo-Rangel did not file a motion to suppress and instead entered a plea of guilty. This court has held that "[a] criminal defendant who enters a voluntary plea of guilty while represented by competent counsel waives all nonjurisdictional defects in the proceedings." *State v. Fortner*, 10th Dist. No. 08AP-191, 2008-Ohio-5067, ¶ 8 (noting that by pleading guilty, a defendant waives his right to challenge any defects in an indictment); *see also State v. Sullivan*, 10th Dist. No. 12AP-526, 2013-Ohio-675, ¶ 20. Though Montelongo-Rangel attempts to phrase his arguments related to the defects in the search warrant as creating a jurisdictional problem, we note, as the trial court did, that Montelongo-Rangel does not challenge the subject-matter jurisdiction of the trial court to accept his guilty plea. Additionally, Montelongo-Rangel did not timely appeal from his judgment of conviction and sentence, and this court denied his request to file a delayed appeal. The arguments Montelongo-Rangel makes in his October 2, 2019 motion to vacate are arguments Montelongo-Rangel could have made in a direct appeal or by a prior motion. Consequently, res judicata operates to bar Montelongo-Rangel from making these arguments in a post-sentence motion to withdraw his plea. *Morris* at ¶ 13. Thus, because res judicata bars Montelongo-Rangel's motion, the trial court did not err in denying Montelongo-Rangel's motion. *Id.* Accordingly, we overrule Montelongo-Rangel's sole assignment of error.

IV. Disposition

{¶ 15} Based on the foregoing reasons, the trial court did not err in denying Montelongo-Rangel's motion to vacate or set aside the judgment of his conviction. Having

overruled Montelongo-Rangel's sole assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

DORRIAN and BEATTY BLUNT, JJ., concur.
