

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
ERIE COUNTY

State of Ohio

Court of Appeals Nos. E-17-024

Appellee

Trial Court Nos. 1989-CR-119

v.

Steven W. Yee

**DECISION AND JUDGMENT**

Appellant

Decided: February 9, 2018

\* \* \* \* \*

Kevin J. Baxter, Erie County Prosecuting Attorney, for appellee.

Steven W. Yee, pro se.

\* \* \* \* \*

**JENSEN, P.J.**

**I. Introduction**

{¶ 1} Appellant, Steven W. Yee, appeals the judgment of the Erie County Court of Common Pleas, denying his motion to withdraw his guilty plea. We affirm.

### **A. Facts and Procedural Background**

{¶ 2} Appellant has been before this court on several occasions. Most recently, we considered appellant's arguments concerning a petition for postconviction relief that was filed by him and denied by the trial court. *State v. Yee*, 6th Dist. Erie No. E-12-017, 2013-Ohio-5184. In that case, we summarized the background facts of this case as follows:

In March 1989, the Erie County Grand Jury issued a six count indictment against appellant, Steven W. Yee, charging three counts of aggravated murder, murder, kidnapping and aggravated robbery. The indictment included both capital and firearm specifications.

Yee entered into a plea agreement wherein the state promised to nolle four counts of the indictment and the capital specifications. In exchange, Yee agreed to enter a plea of guilty to one count of aggravated murder with a firearm specification and one count of aggravated robbery with a firearm specification. On August 30, 1993, Yee appeared in court, withdrew his previous pleas of not guilty and entered pleas of guilty pursuant to the agreement. When entering his plea, Yee reserved the right to appeal the trial court's authority to sentence him to two consecutive terms of incarceration on the firearm specifications.

A sentencing hearing was held in September 1993. As to the charge of aggravated murder, Yee was sentenced to life in prison with eligibility of parole after 20 years. As to the charge of aggravated robbery, Yee was

sentenced to 10-25 years in prison. Yee was sentenced to three years each for the two firearm specifications. The trial court ordered that the sentences for the aggravated murder and aggravated robbery be served concurrently. The sentences for the firearm specifications were ordered to be served consecutive to each other and consecutive to the concurrent sentences for aggravated murder and aggravated robbery.

Yee appealed. Upon review, we vacated the portion of the sentence which imposed two consecutive three-year terms of incarceration for the firearm specifications. *See State v. Yee*, 6th Dist. Erie No. E-93-72, 1994 Ohio App. LEXIS 5142 (Nov. 18, 1994). \* \* \*

We remanded the matter to the trial court.

On December 28, 1995, with consent of counsel, the trial judge issued a judgment entry nunc pro tunc merging the firearm specifications and imposing three years of actual incarceration for the specifications. The stated purpose of the entry was to “reflect the correct language as to the sentence imposed on the firearm specifications.” The judgment entry was filed with the clerk of courts on January 4, 1996.

On July 27, 2004, Yee filed a motion for leave to withdraw his guilty pleas or, in the alternative, to vacate and set aside the judgment of conviction. The trial court denied Yee’s motion. On April 8, 2011, Yee filed a motion to vacate his conviction or withdraw his guilty plea. Again, the trial court denied Yee’s motion.

On February 29, 2012, Yee filed a motion for de novo resentencing pursuant to the Ohio Supreme Court's decision in *State v. Johnson*, 128 Ohio St.3d 153, 2010-Ohio-6314, 942 N.E.2d 1061. The trial court, construing the motion as a petition for postconviction relief under R.C. 2953.21, denied the motion as untimely. The trial court also found that Yee's claims were barred by the doctrine of res judicata. *Yee*, 6th Dist. Erie No. E-12-017, 2013-Ohio-5184, at ¶ 2-8.

{¶ 3} Appellant subsequently appealed the trial court's denial of his petition for postconviction relief. We rejected appellant's arguments, and found that the trial court did not abuse its discretion in denying the postconviction petition. *Id.* at ¶ 15.

{¶ 4} Thereafter, on October 11, 2016, appellant filed a "motion for leave to withdraw his 'void' guilty plea based on actual innocence, prosecutorial misconduct and newly discovered evidence" pursuant to Crim.R. 32.1. In his motion, appellant asserted that his conviction was void because he was lured into pleading guilty despite his innocence based upon the state's pledge to seek the death penalty "with a 100% chance of acquiring it" based on "bogus" DNA evidence. In support of his argument, appellant stated that he had recently received documents the FBI sent to the Innocence Project on August 1, 2013, allegedly revealing that the federal government utilized misleading evidence to secure his convictions in federal court. Appellant insisted that, had he been aware of the use of such evidence, he would not have entered a guilty plea. Appellant

further indicated that the state threatened to use the same “bogus” evidence as the federal authorities used to secure the convictions.

{¶ 5} In response to appellant’s motion, the state noted that the evidence referred to by the FBI in its letter to the Innocence Project pertained to hair analysis that was performed by the government’s experts. The conclusions drawn from the hair analysis were later found to have exceeded the limits of science. However, the state argued that this evidence was inconsequential in light of the overwhelming incriminatory evidence that remained to establish appellant’s guilt.

{¶ 6} The state pointed out that the FBI’s letter included a disclaimer that the Bureau took “no position regarding the materiality of the error in this case.” Moreover, the state cited the additional incriminating evidence to support its opposition to appellant’s motion. This evidence placed appellant in the vicinity of the murder on the day in question, and included, inter alia, shell casings that were discovered in appellant’s vehicle matching those found in the victim’s vehicle as well as a coconspirator’s blood found in both the victim’s vehicle and appellant’s vehicle.

{¶ 7} The state also emphasized the fact that appellant’s guilty plea, which followed the state’s disclosure of all incriminating evidence including the hair analysis, constituted an absolute admission of guilt belying his claim of actual innocence.

{¶ 8} Upon consideration of the parties’ arguments, the trial court issued its decision summarily denying appellant’s motion to withdraw his guilty plea on March 30, 2017. Appellant’s timely notice of appeal followed.

## **B. Assignments of Error**

{¶ 9} On appeal, appellant assigns the following errors for our review:

Assignment of Error One: The trial court retains jurisdiction over deciding a post sentencing motion to withdraw guilty plea, Crim.R. 32.1, and committed plain error, Crim.R. 52(B), and/or abused its discretion by the denial of the appellant's motion.

Assignment of Error Two: The trial court committed plain error, Crim.R. 52(B), and/or abused its discretion by the denial of Mr. Yee's motion to withdraw his guilty plea that was improperly motivated and/or coerced by the government that was utilizing bogus evidence to create a windfall conviction, rendering the guilty plea void and open to collateral attack at any time.

## **II. Analysis**

{¶ 10} In his assignments of error, appellant argues that the trial court committed plain error in denying his Crim.R. 32.1 motion to withdraw his guilty plea.

{¶ 11} Under 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.” A motion to withdraw a guilty plea made subsequent to sentencing will be granted only in “extraordinary cases” upon the demonstration of manifest injustice. *State v. Smith*, 49 Ohio St.2d 261, 264, 361 N.E.2d 1324 (1977).

{¶ 12} A motion made pursuant to Crim. R. 32.1 is left to the sound discretion of the trial court. *Id.* at paragraph two of the syllabus. Thus, we review the trial court's decision denying appellant's motion under an abuse of discretion standard. *State v. Francis*, 104 Ohio St.3d 490, 2004-Ohio-6894, 820 N.E.2d 355, ¶ 32. Abuse of discretion suggests that the trial court's decision was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 13} In his first assignment of error, appellant argues that the trial court retained jurisdiction to consider his motion to withdraw his guilty plea. In his second assignment of error, appellant contends that the trial court abused its discretion in denying his motion to withdraw his guilty plea.

{¶ 14} In making his arguments, appellant relies upon the FBI's letter to the Innocence Project as evidence that he was actually innocent of the crimes for which he was convicted. However, the statements made in the letter, as represented to this court by appellant, only call into question the veracity of a small fraction of the state's evidence – namely the scientific reliability of the hair analysis that was performed in this case. As noted by the state, the incriminating evidence implicating appellant in this case was not limited to the hair evidence. Moreover, it is axiomatic that a guilty plea operates as a complete admission of guilt. *State v. Stumpf*, 32 Ohio St.3d 95, 104, 512 N.E.2d 598 (1987). Appellant does not challenge the trial court's plea colloquy or assert that his plea was not knowing, intelligent, and voluntary.

{¶ 15} In sum, we find that the newly discovered unreliability of the hair analysis evidence in this case, standing alone, does not justify a finding a manifest injustice necessary to warrant the granting of appellant’s motion to withdraw his guilty plea under Crim.R. 32.1. Therefore, we find that the trial court did not abuse its discretion in denying the motion. Accordingly, appellant’s assignments of error are not well-taken.

### III. Conclusion

{¶ 16} In light of the foregoing, the judgment of the Erie County Court of Common Pleas is affirmed. Appellant is ordered to pay costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.  
*See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

James D. Jensen, J.

Christine E. Mayle, P.J.

CONCUR.

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JUDGE

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