

[Cite as *State v. Rice*, 2018-Ohio-5356.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106953

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MARCUS E. RICE

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-17-614393-D

BEFORE: Jones, J., E.A. Gallagher, A.J., and Keough, J.

RELEASED AND JOURNALIZED: December 27, 2018

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LARRY A. JONES, SR., J.:

{¶1} Defendant-appellant Marcus Rice (“Rice”) appeals his conviction for involuntary manslaughter and felonious assault and raises two assignments of error on appeal:

- I. The finding of guilt was against the manifest weight of the evidence.
- II. The trial court erred in using other acts, to show conformity therewith, in violation of the Rules of Evidence, 404(B).

{¶2} For the reasons that follow, we affirm.

{¶3} In 2017, Rice and three other men were charged in connection with the death of Eric Howard. The four codefendants were charged in a 21-count indictment with multiple counts of aggravated murder, attempted murder, felonious assault, discharge of firearm on or near prohibited premises, all containing one- and three-year firearm specifications, and having weapons under disability. The matter proceeded to a joint trial by jury.

{¶4} During trial, Rice and two of his codefendants decided to plead guilty in an amended

indictment to involuntary manslaughter with a three-year firearm specification and felonious assault. As part of the plea, three defendants, including Rice, agreed to testify against the remaining codefendant. The parties also agreed to a sentence between six and 14 years, to be decided by the trial court at sentencing.

{¶5} The remaining codefendant was acquitted by the jury of all charges. At the sentencing hearing, Rice made an oral motion to withdraw his guilty plea. The trial court denied his request and sentenced Rice to a total of ten years in prison as follows: seven years for involuntary manslaughter concurrent to seven years for felonious assault but consecutive to the three-year firearm specification.

{¶6} In his first assignment of error, Rice contends that the trial court's finding of guilt was against the manifest weight of the evidence.

{¶7} A guilty plea waives a defendant's right to challenge sufficiency or manifest weight of the evidence. *State v. Jamison*, 2d Dist. Montgomery No. 21165, 2006-Ohio-4933, ¶ 38. Crim.R. 11(B)(1) provides that "a plea of guilty is a complete admission of the defendant's guilt." By entering a plea of guilty, Rice surrendered his right to have the state prove his guilt beyond a reasonable doubt. In addition, Rice has provided no evidence that the trial court failed to follow the requirements of Crim.R. 11 at the time he entered his plea of guilty in exchange for concessions by the state of Ohio. *See Jamison at id.*

{¶8} In this case, trial commenced but midway through, Rice chose to waive his right to a trial and enter into a plea agreement. As such, he has waived all errors he could have claimed had he decided to proceed with trial and been convicted. *See State v. Barrett*, 2d Dist. Montgomery No. 24150, 2011-Ohio-2303, ¶ 3, citing *State v. Griggs*, 103 Ohio St.3d 85, 2004-Ohio-4415, 814 N.E.2d 51 (A defendant waives his or her right to present

manifest-weight-of-the-evidence or sufficiency-of-the-evidence attacks against his or her convictions by entering a guilty plea.).

{¶9} The first assignment of error is overruled.

{¶10} In the second assignment of error, Rice argues that the trial court erred in considering evidence of a prior criminal charge. In this assignment of error, Rice contends that the court erred in considering a prior charge for aggravated murder in denying his motion to withdraw his guilty plea. Although not worded as such, we construe this assignment of error to mean that Rice is arguing that the trial court erred in denying his motion to withdraw his guilty plea.

{¶11} Under Crim.R. 32.1, a criminal defendant may move to withdraw a guilty or no contest plea before sentence is imposed. Generally, “a presentence motion to withdraw a guilty plea should be freely and liberally granted.” *State v. Xie*, 62 Ohio St.3d 521, 527, 584 N.E.2d 715 (1992); *see also State v. Zimmerman*, 10th Dist. Franklin No. 09AP-866, 2010-Ohio-4087, ¶ 11.

{¶12} A defendant, however, “does not have an absolute right to withdraw a plea prior to sentencing.” *Xie at id.* “[T]he trial court must conduct a hearing to determine whether there is a reasonable and legitimate basis for the withdrawal of the plea.” *Id.*

{¶13} A trial court’s decision on a presentence motion to withdraw a plea is subject to review for abuse of discretion. *Id.* at paragraph two of the syllabus; *Zimmerman* at ¶ 12. An abuse of discretion occurs where a decision is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶14} There are a number of nonexhaustive factors to consider in determining whether a trial court abused its discretion by denying a presentence motion to withdraw, including:

“(1) whether the prosecution would be prejudiced if the plea were vacated; (2) whether the offender was represented by highly competent counsel; (3) the extent of the Crim.R. 11 hearing; (4) whether there was a full hearing on the motion to withdraw the offender’s guilty plea; (5) whether the trial court gave full and fair consideration to the motion; (6) whether the motion was made within a reasonable time; (7) whether the motion set forth specific reasons for the withdrawal; (8) whether the accused understood the nature of the charges and possible penalties; and (9) whether the accused was perhaps not guilty or had a complete defense to the crime.”

Zimmerman, 10th Dist. Franklin No. 09AP-866, 2010-Ohio-4087 at ¶ 13, quoting *State v. Jones*, 10th Dist. Franklin No. 09AP-700, 2010-Ohio-903, ¶ 10, citing *State v. Fish*, 104 Ohio App.3d 236, 240, 661 N.E.2d 788 (1st Dist.1995). Consideration of these factors is a balancing test, and no single factor is conclusive. *Zimmerman* at *id.*, citing *Fish* at *id.*

{¶15} During his sentencing hearing, Rice moved to withdraw his plea, arguing that he had not wanted to plead guilty but felt pressured by his codefendants to do so. The trial court determined that Rice wanted to withdraw his guilty plea merely because one of his codefendants was acquitted at trial, and Rice wanted to now go to trial in hopes he would also be acquitted. Rice argues on appeal that he should have been allowed to withdraw his plea because there was no evidence that he was involved in Howard’s death and he should have received a trial separate from his codefendants. Rice admits, however, that he never asked for a separate trial.

{¶16} Rice’s change of heart or hindsight on how he should have proceeded through the trial process do not constitute a “reasonable and legitimate” basis for withdrawal. “Ohio courts have consistently held that a change of heart is deemed insufficient to justify withdrawing a

guilty plea * * *.” *State v. Jones*, 2018-Ohio-2055, 110 N.E.3d 1049, ¶ 35 (8th Dist.), *appeal not accepted*, 153 Ohio St.3d 1469, 2018-Ohio-3450, 106 N.E.3d 66, citing *State v. Glass*, 10th Dist. Franklin No. 04AP-967, 2006-Ohio-229, ¶ 37. Courts have concluded as such even under the liberal standards that govern a presentence plea withdrawal motion. *Jones at id.*

{¶17} Moreover, we find that the trial court’s mention of Rice’s previous indictment was not erroneous. The trial court cited Rice’s past record, including a previous indictment for aggravated murder, and his negative institutional record to show Rice’s familiarity with the criminal justice system and that he entered into a guilty plea knowingly, intelligently, and voluntarily.

{¶18} In light of the above, the trial court did not abuse its discretion in denying Rice’s motion to withdraw his guilty plea. The second assignment of error is therefore overruled.

{¶19} Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant’s conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LARRY A. JONES, SR., JUDGE

EILEEN A. GALLAGHER, A.J., and
KATHLEEN ANN KEOUGH, J., CONCUR