

[Cite as *State v. Carr*, 2015-Ohio-2529.]

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

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| STATE OF OHIO, | : | APPEAL NO. C-140172 |
| | | TRIAL NO. B-1307144-A |
| Plaintiff-Appellee, | : | |
| vs. | : | <i>OPINION.</i> |
| ROBERT CARR, | : | |
| Defendant-Appellant. | : | |

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: June 26, 2015

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Scott M. Heenan*,
Assistant Prosecuting Attorney, for Plaintiff-Appellee,

The Farrish Law Firm and *Michaela M. Stagnaro*, for Defendant-Appellant.

Please note: this case has been removed from the accelerated calendar.

CUNNINGHAM, Judge.

{¶1} Defendant-appellant Robert Carr challenges the trial court's denial of his presentence motion to withdraw his guilty plea, and the court's imposition of a prison term as part of the sentence for the commission of a fifth-degree felony. Carr had entered a guilty plea to a single count of breaking and entering. The trial court conducted a Crim.R. 11 colloquy, accepted Carr's plea, and found him guilty of the offense. The trial court then imposed a sentence that included a seven-month prison term, with credit for time already served, and a discretionary three-year period of postrelease control.

{¶2} In his first assignment of error, Carr contends that the trial court abused its discretion when it denied his presentence motion to withdraw his guilty plea. *See* Crim.R. 32.1. The Ohio Supreme Court has held that a trial court should "freely and liberally grant" a presentence motion to withdraw a guilty plea, where the defendant has supplied the court with a "reasonable and legitimate basis" for the withdrawal. *State v. Xie*, 62 Ohio St.3d 521, 526-527, 584 N.E.2d 715 (1992). A defendant, however, has no absolute right to withdraw a guilty plea before sentencing. *Id.* at paragraph one of the syllabus. We will not reverse a trial court's denial of a presentence motion to withdraw a plea absent a showing of an abuse of discretion, meaning that the trial court's decision was unreasonable, arbitrary or unconscionable. *See id.* at paragraph two of the syllabus; *State v. Calloway*, 1st Dist. Hamilton No. C-040066, 2004-Ohio-5613, ¶ 11.

{¶3} In determining whether the trial court abused its discretion, we review the record in light of certain factors that we have identified in our previous decisions. *E.g., Calloway* at ¶ 12, citing *State v. Fish*, 104 Ohio App.3d 236, 240, 661 N.E.2d 788 (1st Dist.1995). These factors include: (1) whether the accused was represented by highly competent counsel; (2) whether the defendant was afforded a complete Crim.R. 11 hearing before entering the plea; (3) whether the court

conducted a full and impartial hearing on the motion, at which time the trial court gave full and fair consideration to the motion; (4) whether the motion was made within a reasonable time; (5) whether the motion set forth specific reasons for the withdrawal; (6) whether the defendant understood the nature of the charges and the possible penalties; (7) whether the defendant was possibly not guilty of the charges or had a complete defense to the charges; and (8) whether the state would have been prejudiced by the withdrawal.

{¶4} Here, Carr argues that he should have been allowed to withdraw his plea because (1) he had not fully understood the consequences of his plea, (2) he had felt coerced because the state intended to call his wife to testify against him, and (3) he had a valid defense to the charges. But nothing in this record suggests that the trial court erred in overruling Carr's pro se motion.

{¶5} The motion was timely made, and there is little evidence that the state would have been prejudiced by going to trial. Nonetheless, when Carr entered his guilty plea, he was represented by an experienced attorney. The trial court had engaged Carr in a thorough Crim.R. 11 hearing before accepting his plea. The colloquy was more than sufficient to ensure that Carr had entered his guilty plea voluntarily, intelligently, and knowingly, and to ensure that he had not been confused about the consequences of his plea.

{¶6} The trial court afforded Carr a full hearing on the motion to withdraw his guilty plea. Carr was permitted to fully explain his mistaken contentions that the state could have compelled his wife to testify against him at trial, *see* Evid.R. 601(B), and that he could lawfully enter and possess someone's home because they had stopped payment on their mortgage and had left the premises. As the trial court did not abuse its discretion in denying the motion, the first assignment of error is overruled.

{¶7} In his second assignment of error, Carr argues that the trial court erred in imposing a prison term as a sanction for the commission of a nonviolent fifth-degree felony without making the statutorily required findings. *See* R.C. 2929.13(B)(1). He also contends that the trial court failed to consider the purposes and principles of felony sentencing. *But see State v. Alexander*, 1st Dist. Hamilton Nos. C-110828 and C-110829, 2012-Ohio-3349, ¶ 24. Carr does not challenge that portion of the sentence imposing postrelease control. *Compare State v. Ysrael*, 1st Dist. Hamilton No. C-140148, 2015-Ohio-332, ¶ 10 (defendant sought to correct postrelease-control sanction).

{¶8} But we need not reach the merits of Carr's argument. Carr did not seek to stay the execution of sentence. The trial court imposed the challenged seven-month prison term, with 110 days of jail-time credit, in March 2014. Our record can fairly be read to indicate that Carr has completed that period of incarceration and has been released from prison.

{¶9} "The concept of mootness on appeal is that there is no meaningful remedy that the appellate court can provide in the event of a reversal. In the criminal sentence context, it is a recognition that once the defendant has been released from prison on a sentence that is challenged on appeal, there is no way the court of appeals can give him back the time served in prison." *State v. Portis*, 2d Dist. Clark No. 2010-CA-95, 2011-Ohio-2429, ¶ 18. We have no duty to decide an assignment of error that is moot in the sense that the court cannot provide the appellant with any meaningful relief. *Miner v. Witt*, 82 Ohio St. 237, 92 N.E. 21 (1910).

{¶10} Therefore, even if we were to conclude that the trial court erred in imposing a prison term as part of Carr's sentence, we cannot provide him with any meaningful relief in the form of an order affecting the imposition or duration of the prison term he challenges. *See Miner*; *see also State v. Naegele*, 12th Dist. Butler

No. CA2013-01-004, 2013-Ohio-2861, ¶ 12. Therefore, we do not reach Carr's second assignment of error. *Compare Ysrael*, 1st Dist. Hamilton No. C-140148, 2015-Ohio-332, at ¶ 13 (holding that the entire appeal is subject to dismissal when a similarly situated appellant challenges only his sentence, and not the underlying finding of guilt). The judgment of the trial court is affirmed.

Judgment affirmed.

HENDON, P.J., and FISCHER, J., concur.

Please note:

The court has recorded its own entry on the date of the release of this opinion.