

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	Nos. 12AP-768
	:	(C.P.C. No. 11CR-09-4789)
Stephan D. Jackson,	:	and 12AP-769
	:	(C.P.C. No. 11CR-11-1013)
Defendant-Appellant.	:	
	:	(REGULAR CALENDAR)
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D E C I S I O N

Rendered on March 26, 2013

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*Ron O'Brien*, Prosecuting Attorney, and *Michael P. Walton*,  
for appellee.

*Bay Law Office L.L.C.*, and *John A. Bay*, for appellant.

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APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} Stephan D. Jackson is appealing from his convictions on two counts of rape and the sentence imposed as a result of those convictions. He assigns three errors for our consideration:

[I.] The trial court erred, abused its discretion, and denied Mr. Jackson due process of law by denying his presentence motion to withdraw his guilty plea. Fifth and Fourteenth Amendments to the United States Constitution; Section 16, Article I of the Ohio Constitution; Crim.R. 32.1.

[II.] The trial court erred and denied Mr. Jackson due process of law by imposing court costs without notifying him that his

failure to pay such costs may result in the court ordering him to perform community service. Fifth and Fourteenth Amendments to the United States Constitution; Section 16, Article I of the Ohio Constitution; R.C. 2947.23; Crim.R. 52(B).

[III.] The trial court committed plain error and denied Mr. Jackson due process of law when it imposed court costs without the proper notification that his failure to pay court costs may result in the court ordering him to perform community service. Fifth and Fourteenth Amendments to the United States Constitution; Section 16, Article I of the Ohio Constitution; R.C. 2947.23; Crim.R. 52(B).

{¶ 2} Motions to withdraw guilty pleas which are made prior to sentencing are supposed to be freely granted by the trial courts. *See State v. Xie*, 62 Ohio St.3d 521 (1992).

{¶ 3} When a trial court does not grant such a motion, the appellate court which reviews the trial court's ruling is supposed to apply an abuse of discretion standard. In this context, the standard apparently means "did the trial court abuse its discretion when it failed to grant the motion to withdraw freely."

{¶ 4} Prior decisions of this court have set forth several factors to be considered in this context:

- (1) whether the defendant was represented by highly competent counsel;
- (2) whether the trial court conducted a full Crim. R. 11 hearing before accepting the plea;
- (3) whether the trial court conducted a full and impartial hearing on the motion to withdraw the plea;
- (4) whether the trial court gave full and fair consideration to the request;
- (5) the prejudice that would be suffered by the State if the plea is withdrawn;
- (6) the timeliness of the motion;

(7) whether the motion sets out specific reasons for the withdrawal;

(8) whether the defendant understood the nature of the charges and the possible penalties; AND

(9) whether the defendant is possibly not guilty or has a possible defense to the charges.

*See State v. Kirigiti*, 10th Dist. No. 06AP-612, 2007-Ohio-6852.

{¶ 5} The proceedings in the trial court left no question as to Jackson's guilt as to one of the two rape charges. Jackson arranged a meeting with a 14-year-old girl he met via the internet and engaged in sexual activity. Although Jackson could argue the sex was consensual, the girl's activity immediately afterwards strongly implied that Jackson took their meeting far beyond the date she expected. Consensual or not, the age of the girl made the encounter a rape. The fact that Jackson sought to set aside his guilty plea in that case damaged his credibility when he sought to set aside his guilty plea in the other case. The trial court did not, in any way, abuse its discretion in refusing to set aside the guilty plea in this first set of charges.

{¶ 6} In the second case, DNA evidence indicated that Jackson engaged in sexual activity with a woman who claimed she was raped after being abducted. Jackson's encounter with this woman occurred ten days before his rape of the 14 year old. Jackson claimed in the trial court that this earlier rape allegation was false because the sex was consensual. For him to fully pursue that defense, he would have had to testify in open court, while acknowledging his rape conviction in the other case. If he did not testify, there would be little or no evidence that the woman who claimed she was abducted off the streets on the east side of Columbus and sexually assaulted was fabricating her story of rape and abduction. The likelihood of Jackson convincing a jury that the State of Ohio failed to prove its case under that circumstance seems remote at best.

{¶ 7} Turning to the factors set forth in our *Kirigiti* case, Jackson was represented by an experienced criminal defense lawyer. The trial court carefully complied with Crim.R. 11 in accepting the guilty pleas. The trial court, after initially venting about Jackson filing a motion to withdraw the guilty plea at the last minute, conducted a

thorough hearing days later. We cannot see inside the mind of a trial court judge so cannot say how full and fair the trial court's consideration of the merits of the motion actually was, but the actual hearing on the motion was correctly and fairly conducted.

{¶ 8} Jackson filed his motion only three days before his sentencing. Its lateness mitigates against a finding it was timely.

{¶ 9} The State did not allege prejudice, but could have encountered difficulty on returning the victims to the courthouse after they knew of the guilty pleas and being told there would be no trial.

{¶ 10} The reasons for the attempt to withdraw the guilty pleas was Jackson's claims that the sex was consensual. The problem with Jackson's reasoning is discussed above.

{¶ 11} The original Crim.R. 11 hearing clearly apprised Jackson of the charges and the penalties which attached to those charges.

{¶ 12} The possibility of Jackson being not guilty of the rape of the 14 year old is nonexistent. The likelihood of Jackson being not guilty in the other case seems remote at best.

{¶ 13} Applying the factors in the *Kirigiti* case to the facts of this case, the trial court did not abuse its discretion in refusing to set aside the guilty plea.

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

{¶ 15} The second and third assignments of error address the same issue, the failure of the trial court judge to expressly inform Jackson that he might have to do community service to pay his court costs after Jackson had served his 14-year sentence for rape.

{¶ 16} The issue of whether the Ohio legislature can tell Ohio judges that judges cannot suspend court costs for felons who serve lengthy sentences is not before us. The legislature has passed a statute that tells judges something they must say when handing out criminal sentences.

{¶ 17} Ideally, one of the lawyers in the courtroom would remind the trial judge of the legislative mandate contained in R.C. 2947.23. Since no one did, we apply a plain error standard. This court has earlier ruled that plain error should be used to prevent a manifest miscarriage of justice. *See State v. Petty*, 10th Dist. No. 11AP-716, 2012-Ohio-

2989. This is consistent with Crim.R. 52(B), which contemplates that only substantial rights may be noticed via plain error analysis. We cannot say the failure to tell Jackson that community service might be required in 14 years was a violation of a substantial right, especially since the State of Ohio can and does garnish inmate accounts to collect court costs before an inmate is released into the public. Further, the Ohio legislature might revise the requirement by then.

{¶ 18} The second and third assignments of error are overruled.

{¶ 19} All three assignments of error having been overruled, the judgment of the Franklin County Court of Common Pleas is affirmed.

*Judgment affirmed.*

BRYANT and BROWN, JJ., concur.

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