[Cite as *State v. Grant*, 2013-Ohio-2981.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	No. 12AP-650 (C.P.C. No. 09CR-06-3364)
v.	:	No. 12AP-651 (C.P.C. No. 09CR-07-4034)
Domanic J. Grant,	:	
		(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on July 9, 2013

Ron O'Brien, Prosecuting Attorney, and *Sheryl L. Prichard*, for appellee.

Domanic J. Grant, pro se.

APPEALS from the Franklin County Court of Common Pleas.

SADLER, J.

{¶ 1} Defendant-appellant, Domanic J. Grant, appeals from a judgment of the Franklin County Court of Common Pleas denying his motion to withdraw guilty plea. For the reasons that follow, we affirm the judgment of the trial court.

I. BACKGROUND

{¶ 2} By way of indictment filed on June 8, 2009, appellant was indicted on one count of attempted rape, a second-degree felony, and one count of gross sexual imposition, a fourth-degree felony. On July 9, 2009, appellant was indicted in a separate indictment on one count of rape and one count of kidnapping, both first-degree felonies. On December 8, 2009, appellant entered pleas of guilty to gross sexual imposition, a fourth-degree felony, and rape, a first-degree felony. A nolle prosequi was entered as to

the remaining counts in each case. The trial court ordered a presentence investigation report and the matter was scheduled for a sentencing hearing. On February 18, 2010, appellant was sentenced on both cases to an aggregate term of incarceration consisting of ten years and five months. A judgment entry reflecting such action was filed on February 25, 2010. No appeal was taken from said judgment.

{¶ 3} On March 21, 2012, appellant filed a Crim.R. 32.1 motion to withdraw guilty plea. Therein, appellant argued coercion, ineffective assistance of counsel, and that he was not competent at the time he entered his guilty pleas. The trial court denied appellant's motion finding no suggestion in the record that appellant lacked competency at the time he entered his guilty pleas. Additionally, the trial court found the record contained no mental health information suggesting anyone has "observed, or treated, any significant mental health issues in the last nearly two and a half years." (Entry, 3.)

II. ASSIGNMENT OF ERROR

{¶ 4} This appeal followed and appellant brings the following assignment of error for our review:

> The trial court erred when it denied Appellant a competency hearing to determine if Appellant's guilty plea was entered voluntarily, knowingly and intelligently since Appellant was under the effects of psychotropic drugs.

III. DISCUSSION

{¶ 5} Crim.R. 32.1 provides:

> 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.

{¶ 6} "Manifest 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." *State v. Williams*, 10th Dist. No. 03AP-1214, 2004-Ohio-6123, ¶ 5. " '[I]t is clear that under such standard, a postsentence withdrawal motion is allowable only in extraordinary cases.' " *State v. Gripper*, 10th Dist. No. 10AP-1186, 2011-Ohio-3656, ¶ 7, quoting *State v. Smith*, 49 Ohio St.2d 261, 264 (1977). A defendant seeking to withdraw a

post-sentence guilty plea bears the burden of establishing manifest injustice based on specific facts either contained in the record or supplied through affidavits attached to the motion. *State v. Orris*, 10th Dist. No. 07AP-390, 2007-Ohio-6499.

{¶ 7} A motion to withdraw a guilty plea after sentence is addressed to the sound discretion of the trial court, and the trial court's judgment will not be reversed absent a demonstration of abuse of discretion in concluding no manifest injustice occurred. *State v. Marable*, 10th Dist. No. 03AP-97, 2003-Ohio-6653, ¶ 9; *State v. Boyd*, 10th Dist. No. 97APA12-1640 (Oct. 22, 1998), appeal not allowed, 85 Ohio St.3d 1424 (1999). In order to find that the trial court abused its discretion, we must find more than an error of law or judgment. An abuse of discretion implies that the court's attitude is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 8} " 'Although a trial court must conduct a hearing to determine whether there is a reasonable and legitimate basis for the withdrawal of a guilty plea if the request is made before sentencing, * * * the same is not true when the request is made after the trial court has already sentenced the defendant.' " *Orris* at ¶ 9, quoting *State v. Whiteman*, 11th Dist. No. 2001-P-0096, 2003-Ohio-2229, ¶ 19. Where the trial court considers a post-sentence motion to withdraw a guilty plea, it must conduct a hearing only " 'if the facts alleged by the defendant and accepted as true would require the trial court to permit withdrawal of the plea.' " *Id.*, quoting *Whiteman* at ¶ 19; *State v. Lake*, 10th Dist. No. 95APA07-847 (Mar. 28, 1996). Thus, "if the defendant fails to submit evidence containing sufficient operative facts to demonstrate that his plea was not entered into knowingly and voluntarily, and the record indicates that the defendant is not entitled to relief, the trial court may dismiss the motion without a hearing." *Whiteman* at ¶ 20, quoting *State v. Kerns*, 11th Dist. No. 99-T-0106 (July 14, 2000).

{¶ 9} Appellant asserts the trial court erred in denying his motion to withdraw guilty plea because he was erroneously not afforded a competency hearing at the time he entered his guilty pleas. According to appellant, because he was under the influence of psychotropic drugs at the time he entered his guilty pleas, he was not competent such that his pleas were not knowingly, intelligently, and voluntarily entered.

{¶ 10} A criminal defendant is presumed to be mentally competent and bears the burden of rebutting this presumption. *State v. Doak*, 7th Dist. No. 03 CO 15, 2004-Ohio-

1548, ¶ 16, citing *State v. Davis*, 7th Dist. No. 00 CO 61, 2002-Ohio-3853, ¶ 14, citing *State v. Filiaggi*, 86 Ohio St.3d 230, 236 (1999); R.C. 2945.37(G). A reviewing court must give extreme deference to a trial court's determination that a defendant is competent to knowingly, intelligently, and voluntarily accept a plea. *Id.*; *see contra State v. Senich*, 8th Dist. No. 82581, 2003-Ohio-5082, ¶ 18 (appellate court uses a de novo standard when reviewing a trial court's decision to accept a guilty plea).

{¶ 11} Appellant's request to withdraw his previously entered guilty pleas suffers a number of deficiencies. Initially, the record contains no transcript of the guilty plea hearing. Hence, the information in the record about appellant's guilty plea comes in large part from the guilty plea form, which reflects that both appellant and his counsel signed the form explicitly describing the charges to which appellant agreed to plead guilty and the range of possible punishments. The entry of guilty plea form also reflects appellant was freely and voluntarily exercising his own will and best judgment. Thus, there is nothing in the record itself suggesting appellant entered his plea involuntarily, unknowingly or unintelligently. *Orris*.

{¶ 12} Additionally, appellant's motion fails to support his contention that he was under the influence of medications at the time of his guilty plea. Other than the bare assertions made in his motion to withdraw and appellate brief, appellant provides no evidence that he was medicated at the time of his plea. We recognize appellant attached to his appellate brief a document purporting to indicate he was scheduled for an involuntary medication hearing on April 10, 2012 to determine whether Haldol and Cogentin should be involuntarily administered. This document, however, is not part of the record in this matter. App.R. 9(A)(1) provides that the record on appeal, in all cases, constitutes "[t]he original papers and exhibits thereto filed in the trial court, the transcript of proceedings, if any, including exhibits, and a certified copy of the docket and journal entries prepared by the clerk of the trial court." An exhibit merely appended to an appellate brief is not part of the record, and we may not consider it in determining the appeal. *In re D.P.*, 10th Dist. No. 12AP-557, 2013-Ohio-177, ¶ 18, citing *Jefferson Golf & Country Club v. Leonard*, 10th Dist. No. 11AP-434, 2011-Ohio-6829, ¶ 10. Accordingly, for purposes of determining the merits of this appeal, we will not consider the new documents appellant attached to his brief.

{¶ 13} Even if we were to consider the documents attached to appellant's appellate brief, the notice regarding the involuntary medication hearing pertains to a hearing scheduled in April 2012 and provides no information regarding what medications, if any, appellant was taking at the time he entered his guilty pleas. Further, there is no evidence in the record suggesting that the medications appellant alleges he was taking would induce confusion and incoherency so as to render him incapable of entering a voluntary, knowing, and intelligent guilty plea. *Orris* (no evidence supporting assertion that medication caused confusion; therefore, denial to withdraw guilty plea affirmed); *State v. Anderson,* 10th Dist. No. 06AP-272, 2006-Ohio-5440 (no evidence medication would render guilty plea invalid; therefore, denial of motion to withdraw guilty plea affirmed); *State v. Zinn,* 4th Dist. No. 04CA1, 2005-Ohio-525 (denial of post-sentence motion to withdraw guilty plea affirmed where record contained no evidence to support assertion that medications prevented defendant from entering a proper guilty plea).

{¶ 14} Because the record contains no evidence to support his post-sentence motion to withdraw guilty plea, we conclude the trial court did not abuse its discretion by finding appellant failed to demonstrate a manifest injustice sufficient to allow the withdrawal of his guilty plea. Consequently, we overrule appellant's assignment of error.

IV. CONCLUSION

{¶ 15} Having overruled appellant's sole assignment of error, we hereby affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

KLATT, P.J., and BROWN, J., concur.
