

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellee, : No. 13AP-289
 : (C.P.C. No. 09CR-08-4634)
 v. :
 : (REGULAR CALENDAR)
 DeAngelo A. Jackson, :
 :
 Defendant-Appellant. :

D E C I S I O N

Rendered on September 19, 2013

Ron O'Brien, Prosecuting Attorney, and *Laura R. Swisher*, for
appellee.

DeAngelo A. Jackson, pro se.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, J.

{¶ 1} This is an appeal by defendant-appellant, DeAngelo A. Jackson, from a judgment of the Franklin County Court of Common Pleas denying his motion to withdraw a guilty plea.

{¶ 2} On August 3, 2009, appellant was indicted on five counts of trafficking in cocaine, in violation of R.C. 2929.03. On February 14, 2011, appellant entered a guilty plea to two counts of trafficking in cocaine as charged in Counts 2 and 3 of the indictment. By judgment entry filed February 28, 2011, the trial court sentenced appellant to four years incarceration as to each count, for a total sentence of eight years. The court entered a nolle prosequi as to Counts 1, 4, and 5 of the indictment.

{¶ 3} On April 11, 2011, appellant filed with this court a motion for leave to file a delayed appeal pursuant to App.R. 5(A). By memorandum decision filed May 26, 2011, this court denied appellant's motion for delayed appeal.

{¶ 4} On December 3, 2012, appellant filed a motion to withdraw his guilty plea pursuant to Crim.R. 32.1. On December 10, 2012, the state filed a memorandum contra the motion. By entry filed February 12, 2013, the trial court denied appellant's motion to withdraw his guilty plea.

{¶ 5} On appeal, appellant, pro se, sets forth the following three assignments of error for this court's review:

ASSIGNMENT OF ERROR NO. 1

THE TRIAL COURT DID NOT HAVE SUBJECT-MATTER JURISDICTION BECAUSE OF AN INVALID COMPLAINT PURSUANT TO CRIM.R. 3.

ASSIGNMENT OF ERROR NO. 2

THE DEFENDANT WAS DENIED A PRELIMINARY HEARING IN VIOLATION OF R.C. 2945.73 R.C. 2945.73 [sic] RENDERING HIS PLEA VOID AND DENYING THE DEFENDANT HIS 6th AND 14th AMENDMENT RIGHTS UNDER THE OHIO CONSTITUTION AND THE UNITED STATES CONSTITUTION.

ASSIGNMENT OF ERROR NO. 3

TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILING TO REQUEST THAT THE CHARGES BE DISMISSED FOR LACK OF A PRELIMINARY HEARING.

{¶ 6} Appellant's assignments of error are somewhat interrelated and will be considered together. Under these assignments of error, appellant contends (1) the trial court did not have subject-matter jurisdiction because of an invalid complaint pursuant to Crim.R. 3, (2) he was denied a preliminary hearing in violation of R.C. 2945.73, and (3) his trial counsel was ineffective for failing to request that the charges be dismissed for lack of a preliminary hearing.

{¶ 7} 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." A criminal defendant "bears the burden of establishing a manifest injustice based on specific facts in the record or facts supplied through affidavits attached to the motion." *State v. Sansone*, 10th Dist. No. 11AP-799, 2012-Ohio-2736, ¶ 7, citing *State v. Hagler*, 10th Dist. No. 10AP-291, 2010-Ohio-6123, ¶ 7. A trial court's decision denying a post-sentence motion to withdraw a plea of guilty is subject to review for abuse of discretion. *State v. Ikharo*, 10th Dist. No. 10AP-967, 2011-Ohio-2746, ¶ 9, citing *State v. Smith*, 49 Ohio St.2d 261 (1977).

{¶ 8} In order to prevail on a claim of ineffective assistance of counsel, appellant must satisfy the two-part test as set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), requiring a defendant to show that (1) his counsel's performance was deficient, and (2) that the deficient performance prejudiced his defense. As applied to guilty pleas, in order to establish prejudice a defendant must show that, but for counsel's errors, he would not have entered a guilty plea. *State v. Xie*, 62 Ohio St.3d 521, 524 (1992).

{¶ 9} In his pro se motion to withdraw, appellant argued that he was "never accused by [the] state law of any criminal offense," that he was "never confronted by his lawful accuser," and that the record "does not affirmatively disclose that the State is a lawful party." (Emphasis omitted.) On appeal, appellant contends the trial court did not have jurisdiction over the case because of the lack of a valid complaint pursuant to Crim.R. 3.

{¶ 10} At the outset, we note that "a complaint is only one means for instituting a criminal action, and * * * charges can also be brought by an indictment or information." *Gotel v. Gansheimer*, 11th Dist. No. 2006-A-0087, 2007-Ohio-2311, ¶ 8, affirmed, 116 Ohio St.3d 316, 2007-Ohio-6437. In the instant case, as observed by the state, the record reflects that appellant was indicted by a grand jury on August 3, 2009. The grand jury indictment was signed by the foreperson, and there is nothing in the record to indicate that appellant was not properly charged. Further, "[t]he manner by which an accused is charged with a crime, whether by indictment returned by a grand jury or by information

filed by the prosecuting attorney, is procedural rather than jurisdictional." *State v. Lathan*, 5th Dist. No. 09-CA-42, 2010-Ohio-4540, ¶ 31.

{¶ 11} Appellant's contention that the state is not a proper party is unpersuasive. *See* R.C. 309.08(A) ("The prosecuting attorney may inquire into the commission of crimes within the county [and] shall prosecute, on behalf of the state, all complaints, suits, and controversies in which the state is a party"). Appellant's claim that he was never confronted by his lawful accuser is also without merit. *See State v. Kiddy*, 11th Dist. No. 89-P-2107 (Nov. 30, 1990) ("By entering a guilty plea, appellant specifically waived his right to confront witnesses under the Sixth Amendment.").

{¶ 12} Appellant contends, under his second assignment of error, that he was denied his right to a preliminary hearing. However, Crim.R. 5(B)(1) provides that "[t]he preliminary hearing shall not be held * * * if the defendant is indicted." *See also State v. Wright*, 2d Dist. No. CA 6394 (Sept. 30, 1980) ("there is no right to a preliminary hearing once an indictment is returned by the Grand Jury").

{¶ 13} Appellant's claim of ineffective assistance of trial counsel is predicated upon his argument that he had a right to a preliminary hearing. Having rejected appellant's argument on this issue, appellant cannot demonstrate that his trial counsel was deficient for failing to request that the charges be dismissed for lack of a preliminary hearing.

{¶ 14} Upon review, the trial court did not abuse its discretion in denying appellant's motion to withdraw his plea to correct a manifest injustice based upon alleged lack of jurisdiction or ineffective assistance of counsel. Based upon the foregoing, appellant's first, second, and third assignments of error are without merit and are overruled, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

KLATT, P.J., and SADLER, J., concur.
