[Cite as *State v. Davis*, 2015-Ohio-2348.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	No. 14AP-966 (C.P.C. No. 77CR-665B)
v.	:	(REGULAR CALENDAR)
Anthony S. Davis,	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 16, 2015

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

Anthony S. Davis, pro se.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, P.J.

{¶ 1} This is an appeal by defendant-appellant, Anthony S. Davis, from a judgment of the Franklin County Court of Common Pleas denying his motion to withdraw guilty plea pursuant to Crim.R. 32.1.

{¶ 2} On February 11, 1977, appellant was indicted in Franklin County Common Pleas case No. 77CR-665B on two counts of aggravated robbery, in violation of R.C. 2911.01, and one count of theft, in violation of R.C. 2913.02.[1] Appellant subsequently entered a guilty plea to one count of aggravated robbery, and the trial court sentenced him to 4 to 25 years imprisonment. In 1982, appellant received parole, but he reoffended in

[1] Appellant has a lengthy history of incarceration. The following factual background is taken in part from an exhibit attached to appellant's motion to withdraw guilty plea. The exhibit contains the affidavit of Lora Heiss, the correctional records management supervisor with the Ohio Department of Rehabilitation and Correction.

1985, and the trial court imposed concurrent 18-month sentences for theft and forgery convictions. On August 15, 1986, appellant again received parole. In 1987, he was convicted in Guernsey County of breaking and entering, and the trial court sentenced him to a 1-year term of incarceration.

{¶ 3} On April 3, 1989, appellant received parole. In late 1989, he was convicted in Morrow County of aggravated robbery and breaking and entering, and the trial court sentenced him to 5 to 25 years. Appellant's parole in case No. 77CR-665B was revoked, and the Ohio Department of Rehabilitation and Correction ("ODRC") aggregated appellant's 1977 sentence with the 1989 sentence, for a new aggregate maximum sentence expiration date of April 6, 2028. Appellant received parole on December 22, 1995, but, in 1996, he was convicted and sentenced for offenses in Ashland County and later convicted and sentenced for offenses in Richland County.[2]

{¶ 4} On November 6, 2013, appellant filed a complaint for declaratory judgment in the Franklin County Court of Common Pleas against ODRC, requesting a declaration from the court that he had served the maximum sentence levied in his original 1977 conviction (case No. 77CR-665B). Both parties filed motions for summary judgment. By decision and entry filed March 21, 2014, the trial court denied appellant's motion for summary judgment and granted ODRC's cross-motion for summary judgment. In its decision, the trial court determined that ODRC had properly aggregated the 25-year maximum sentence from appellant's 1977 conviction with the 25-year maximum sentence from his 1989 conviction in Morrow County, resulting in a total maximum sentence of 50 years. The court therefore found appellant's maximum term of imprisonment had not yet expired. Appellant filed an appeal from the trial court's decision. In *Davis v. Dept. of Rehab. & Corr.*, 10th Dist. No. 14AP-337, 2014-Ohio-4589, ¶ 21, this court affirmed the judgment of the trial court, finding that the court "properly refused to sever Davis' 1977 sentence from his aggregate sentence."

{¶ 5} On July 16, 2014, appellant filed a pro se motion to withdraw guilty plea in the instant action arguing that the State of Ohio, plaintiff-appellee, had breached a plea agreement. More specifically, appellant argued that an agent of the state, Lora Heiss, the correctional records management supervisor for ODRC, had refused to permit his

[2] According to plaintiff-appellee, State of Ohio, appellant's maximum sentence will expire November 2032.

maximum 25-year sentence to expire in case No. 77CR-665B. By decision and entry filed October 31, 2014, the trial court denied appellant's motion to withdraw guilty plea, finding that he had not met his burden of demonstrating a manifest injustice.

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

> Assignment Of Error # 1:
>
> THE TRIAL COURT ERRED IN HOLDING THAT APPELLANT FAILED TO MEET THE BURDEN OF PROVING A MANIFEST INJUSTICE IN APPELLANT'S MOTION TO WITHDRAW PLEA OF GUILTY.
>
> Assignment Of Error # 2:
>
> THE TRIAL COURT ABUSED ITS DISCRETION WHEN THE COURT REFUSED TO ALLOW THE APPELLANT TO WITHDRAW, POST-SENTENCE, FROM A PLEA AGREEMENT THAT WAS ALTERED BY THE EXECUTIVE BRANCH OF OUR GOVERNMENT.

{¶ 7} Appellant's assignments of error are interrelated and will be considered together. Under these assignments of error, appellant contends the trial court erred in denying his motion to withdraw guilty plea to correct a manifest injustice and in failing to conduct a hearing on the motion.

{¶ 8} Crim.R. 32.1 states as follows: "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." Under Ohio law, "[a] trial court may allow the post-sentence withdrawal of a plea of guilty only to correct a manifest injustice." *State v. Aleshire*, 5th Dist. No. 2011-CA-73, 2012-Ohio-16, ¶ 23, citing Crim.R. 32.1; *State v. Smith*, 49 Ohio St.2d 261 (1977), paragraph one of the syllabus. Further, "a reviewing court will not disturb a trial court's decision whether to grant a motion to withdraw a plea absent an abuse of discretion." *Aleshire* at ¶ 23, citing *State v. Caraballo*, 17 Ohio St.3d 66 (1985).

{¶ 9} In considering a post-sentence motion to withdraw a guilty plea, a trial court "is not automatically required to hold a hearing." *State v. Barrett*, 10th Dist. No. 11AP-375, 2011-Ohio-4986, ¶ 9. Rather, "a trial court need only conduct an evidentiary

hearing when the facts, as alleged by the defendant, indicate a manifest injustice would occur if the plea was allowed to stand." *State v. Vincent,* 4th Dist. No. 03CA2713, 2003-Ohio-3998, ¶ 10.

{¶ 10} As noted under the facts, appellant committed various offenses while on parole, resulting in the aggregation of his sentences and thereby extending his release date.[3] As also noted, this court previously determined, in addressing appellant's appeal from his declaratory judgment action, that the trial court did not err in refusing to declare ODRC was required to remove appellant's 1977 sentence from his aggregate sentence based on his contention that such sentence had expired. *Davis* at ¶ 22.

{¶ 11} Under Ohio law, in order for a guilty plea to be valid it "must be made voluntarily and intelligently." *State v. Harris*, 6th Dist. No. E-06-015, 2007-Ohio-6362, ¶ 20. Further, a plea "must be made with knowledge of the 'relevant circumstances and likely consequences.' " *Id*., quoting *Brady v. United States*, 397 U.S. 742, 748 (1970). However, "in order for a plea to be knowing, voluntary, and intelligent, a defendant must only be made aware of the direct consequences of the plea, and the trial court is not required to inform the defendant of all possible collateral consequences." *State v. Dumas*, 10th Dist. No. 08AP-179, 2008-Ohio-4896, ¶ 14, citing *Harris*, citing *King v. Dutton* 17 F.3d 151 (6th Cir.1994). Direct consequences of a plea "are those that have a 'definite, immediate and automatic effect upon punishment.' " *State v. Dotson,* 4th Dist. No. 99CA33 (Mar. 12, 2001), quoting *Brady* at 755.

{¶ 12} In the instant case, appellant argues that he never would have entered a guilty plea "had it been explained to [him] that the twenty-five (25) year agreed upon sentence could still be active some thirty-seven (37) years later." Appellant essentially contends that the trial court erred in denying his motion to withdraw guilty plea because he was ignorant of the sentencing consequences of his plea for future crimes he may commit.

{¶ 13} This court has previously noted, however, that "[a] plea's possible enhancing effects on any subsequent sentence have been held to be collateral consequences of the conviction and therefore, are not the type of consequences about

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[3] Former R.C. 2929.41(B)(3), effective until July 1, 1996, provided: "A sentence of imprisonment shall be served consecutively to any other sentence of imprisonment * * * [w]hen it is imposed for a new felony committed by a probationer, parolee, or escapee."

which a defendant must be advised before defendant enters a guilty plea." *State v. Southers*, 10th Dist. No. 88AP-528 (Aug. 30, 1988). *See also Long v. United States*, E.D.Pa. No. Civ. A. 92-2381 (Sept. 15, 1993) ("a guilty plea is not invalid because a defendant was not warned of the collateral consequences thereof, including the effect of the plea on sentencing for any future crime"). As observed by one court, future sentencing consequences for a later crime "is not a direct consequence of a plea at all, but is instead contingent first on the defendant's voluntary decision to commit another crime." *Major v. State*, 790 So.2d 550, 552 (Fla.App.2001). Accordingly, a defendant "can avoid future sentencing consequences, enhanced or otherwise, by refraining from committing new crimes." *Id*.

{¶ 14} Here, the trial court's purported failure to advise appellant of the collateral consequences of his plea, including the potential aggregation of sentences for committing future crimes while on parole, did not render the plea invalid or create a manifest injustice. Accordingly, the trial court did not abuse its discretion in denying appellant's motion to withdraw guilty plea. Further, because appellant cannot demonstrate that the withdrawal of his plea is necessary to correct a manifest injustice, the trial court did not err in ruling on the motion without conducting a hearing.

{¶ 15} Based on the foregoing, appellant's first and second 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.

SADLER and LUPER SCHUSTER, JJ., concur.
