[Cite as *State v. Ridgeway*, 2015-Ohio-2539.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
		No. 14AP-768
Plaintiff-Appellee,	:	(C.P.C. No. 13CR-4322)
		and
v.	:	No. 14AP-769
		(C.P.C. No. 13CR-2014)
Brian K. Ridgeway,	:	
		(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 25, 2015

Michael DeWine, Attorney General, and *Joseph A. Koltak*, for appellee.

Peterson, Conners, Fergus & Peer LLP, and *Istvan Gajary*, for appellant.

APPEALS from the Franklin County Court of Common Pleas

DORRIAN, J.

{¶ 1} Defendant-appellant, Brian K. Ridgeway, appeals from the August 25, 2014 judgment of the Franklin County Court of Common Pleas denying his motions to withdraw, pursuant to Crim.R. 32.1, guilty pleas he entered on June 17, 2014. For the reasons that follow, we affirm.

{¶ 2} On August 15, 2013, appellant was indicted in common pleas case No. 13CR-4322 on one count of workers' compensation fraud, in violation of R.C. 2913.48, a felony of the fourth degree, and one count of theft, in violation of R.C. 2913.02, a felony of the fourth degree. On April 17, 2014, in common pleas case No. 14CR-2014, appellant was indicted on one count of workers' compensation fraud, in violation of R.C. 2913.48, a felony of the fourth degree, and one count of theft, in violation of R.C. 2913.02, a felony of the fourth degree.

{¶ 3} On June 17, 2014, in case No. 13CR-4322, after a jury of 12 people had been sworn but before alternate jurors had been selected to proceed with trial in both cases, appellant entered a plea of guilty, in both cases, to the stipulated lesser-included offense of count one, workers' compensation fraud, pursuant to R.C. 2913.48, a stipulated misdemeanor of the first degree, and the stipulated lesser-included offense of count two, theft, pursuant to R.C. 2913.02, a stipulated misdemeanor of the first degree. The trial court accepted the pleas and set the case for sentencing on August 14, 2014.

{¶ 4} Several days later, on or about June 19, 2014, appellant informed his counsel that he wished to withdraw his pleas. Counsel orally notified the court and, on July 8, 2014, counsel filed a motion to withdraw guilty pleas and set bail.

{¶ 5} The court set the motion for hearing on August 15 and 19, 2014. At the hearing, appellant presented the testimony of two psychologists: Michael G. Drown, Ph.D., a psychologist who had treated appellant for some years for depression triggered by an industrial accident; and Souhair Garas, M.D., an adult psychiatrist who saw appellant twice on a referral from Dr. Drown in July 2014 after appellant had pled guilty. Appellant also testified. The state presented one witness.

{¶ 6} On August 25, 2014, in an 11-page decision by journal entry, the court denied appellant's motion to withdraw the pleas. Appellant timely appeals and asserts the following error:

> THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING DEFENDANT'S CRIM. R. 32.1 MOTION TO VACATE PLEAS.

{¶ 7} A criminal defendant may file a presentence motion to withdraw his guilty plea pursuant to Crim.R. 32.1. This court has repeatedly noted that such motions should be " ' "freely and liberally granted." ' " *State v. Ganguly*, 10th Dist. No. 14AP-383, 2015-Ohio-845, ¶ 13-14, citing *State v. Zimmerman*, 10th Dist. No. 09AP-866, 2010-Ohio-4087, ¶ 11, quoting *State v. Xie*, 62 Ohio St.3d 521, 527 (1992); *State v. Davis*, 10th Dist. No. 07AP-356, 2008-Ohio-107, ¶ 15. Even before sentence is imposed, however, there is no absolute right to withdraw a plea. *Zimmerman* at ¶ 11. A defendant who seeks to withdraw a guilty plea prior to sentencing must establish a reasonable and legitimate basis for the withdrawal of the plea. *Id.* The trial court must then hold a hearing to allow

the defendant to make that showing. *State v. West*, 10th Dist. No. 11AP-548, 2012-Ohio-2078, ¶ 15. The decision to grant or deny a presentence motion to withdraw rests in the sound discretion of the trial court. *Id.; State v. Porter*, 10th Dist. No. 11AP-514, 2012-Ohio-940, ¶ 20. An abuse of discretion connotes a decision that is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 8} A trial court is not required to grant a presentence motion to withdraw a guilty plea. To determine whether a trial court abused its discretion in denying a presentence motion to withdraw a guilty plea, we look to a number of non-exhaustive factors, including: (1) any potential prejudice to the prosecution if the trial court vacated the plea; (2) whether highly competent counsel represented the defendant; (3) the extent of the Crim.R. 11 hearing before the defendant entered his plea; (4) whether the defendant received a full hearing on his motion to withdraw his plea; (5) whether the trial court fully and fairly considered the motion to withdraw the plea; (6) whether the defendant made the motion within a reasonable time; (7) whether the motion set forth specific reasons for the withdrawal; (8) whether the defendant understood the nature of the charges and possible penalties; and (9) whether the defendant may not have been guilty or had a complete defense to the crime. *State v. Harris*, 10th Dist. No. 09AP-1111, 2010-Ohio-4127, ¶ 25, citing *State v. Jones*, 10th Dist. No. 09AP-700, 2010-Ohio-903, ¶ 10, citing *State v. Fish*, 104 Ohio App.3d 236, 240 (1st Dist.1995). "Consideration of the factors is a balancing test, and no one factor is conclusive." *Zimmerman* at ¶ 13, citing *Fish* at 240.

{¶ 9} Before the trial court, appellant argued that he was not in the right frame or state of mind to consciously enter into an agreement. He further argued that he was suffering from overwhelming stress and anxiety associated with preparing for a trial, along with attempting to keep his personal affairs in order. We must use the balancing test outlined above to determine whether the trial court abused its discretion in denying appellant's motion to withdraw his pleas in light of his stated reasons.

{¶ 10} First, the record does not indicate any evidence of prejudice to the state "beyond the ordinary impact of any defendant's subsequent withdrawal of a guilty plea." *Harris* at ¶ 26. Therefore, this factor does not influence the balancing of factors in favor or against appellant's motion to withdraw.

{¶ 11} The second factor is whether appellant was represented by highly competent counsel. Appellant conceded that he had adequate representation at the time of his guilty pleas. The court further noted that appellant's counsel has had many years of experience in criminal law practice and had long familiarity with appellant. (Decision, 9.) Thus, as to the second factor in the balancing test, competent counsel represented appellant at his plea hearing, and this factor weighs against appellant's motion to withdraw.

{¶ 12} The third factor in the balancing test asks this court to look at the extent of the Crim.R. 11 hearing before appellant entered his pleas. The trial court noted in its August 25, 2014 decision that the Crim.R. 11 hearing lasted more than one hour. The court also noted that, "[d]uring the actual Rule 11 colloquy, Mr. Ridgeway repeatedly expressed his desire to change his plea to resolve his case without felony convictions, even though expressing personal unhappiness about doing so." (Decision, 2.) The court noted that, during the Crim.R. 11 hearing, appellant voiced several reasons for his pleas–distinct from evidence he faced, or the seriousness of his alleged crimes–including that he had custody of his two young children and to keep peace with his mother. The court also noted that appellant stated " 'No, I can't say that you [are] twisting my arm. Do I agree with what I'm doing? No. But I'm going to accept the deal.' " (Decision, 9, quoting Tr. 17.) The court then found and reiterated in its August 25, 2014 decision that it remained convinced that appellant entered his guilty pleas knowingly, intelligently, and voluntarily.

{¶ 13} A transcript of the plea hearing was not included in the record; therefore, we accept the trial court's summary of the same. Additionally, we note that, even appellant does not contest the thoroughness or adequacy of the Crim.R. 11 hearing; instead, he asserts that outside factors should direct the court to grant his motion to withdraw his pleas. Because the trial court fully and properly conducted the Crim.R. 11 hearing, the third factor also weighs against a finding that the trial court abused its discretion in denying appellant's motion to withdraw.

{¶ 14} As to the fourth and fifth factors, appellant received a full hearing on his motion to withdraw his pleas, and the trial court fully and fairly considered the motion. The court conducted the hearing over two days, and heard testimony from four

witnesses–three presented by appellant and one presented by the state. The court carefully considered the evidence from the hearing, including the testimonies of Drs. Drown and Garas. In its decision, the court noted Dr. Drown's testimony that, one week prior to trial, appellant was positive, self-confident, looking forward to his trial, and aware that he had to be sharp for trial. He further noted Dr. Drown's conclusion that appellant did not appear unduly stressed for someone facing a criminal trial. The court considered the frequency with which appellant was seeing Dr. Drown relative to a 2010 diagnosis for major depression. The court also considered that, although Dr. Drown had referred appellant to Netcare and Dr. Garas, appellant did not go to Netcare and only saw Dr. Garas after going to the hospital on June 27, 2014, complaining about anxiety and chest pain. The court noted the testimony that nothing major was found to be wrong with appellant. Dr. Garas testified that, after meeting with appellant on July 3, 2014, she prescribed Zuprexa; however, the court noted that appellant rejected that recommendation and told her he only wanted medication for depression and anxiety. The court noted, as follows:

> While this court has had the benefit of psychological testimony, no one offered evidence of any cognitive difficulty before trial, or of anything more than 'depression' in Mr. Ridgeway's mental health history prior to the morning he entered his guilty pleas in June. The fact that he was being treated by a psychologist for depression secondary to work-related injuries is important, but it offers no clear guide to his competency - particularly in the face of his articulate speech and self control during not only the Rule 11 hearing but also his trial the day before. The absence of medical evidence that Ridgeway suffered a genuine mental health episode undermines his effort to vacate his guilty pleas.

(Aug. 25, 2014 Decision, 10-11.)

{¶ 15} Finally, the court noted that appellant testified that he had stopped taking all medications ten days prior to the Crim.R. 32.1 hearing because he started feeling better and suffered some sleep interruption from them.

{¶ 16} The court also considered, but gave little weight to, appellant's testimony that he has little or no memory of his Crim.R. 11 hearing when he entered the guilty pleas.

The court also rejected appellant's testimony that he blacked out during the plea hearing, noting that appellant never told Dr. Drown that he had blacked out.

{¶ 17} We have carefully reviewed the transcript and admitted exhibits from the Crim.R. 32.1 hearing and find that they support the trial court's findings. We note that the record does show that appellant was both severely sleep-deprived and depressed after he entered his pleas. Dr. Drown testified that the depression disorder from which appellant suffered could have impaired or affected his decision-making "exacerbated by the up and coming trial." (Tr. 16.) Finally, Dr. Drown testified that, based on the data appellant reported to him, he did not think appellant "was cognizant and his reasoning process wasn't there." (Tr. 22.) Dr. Drown conceded, however, that "[t]his was post-talk analysis and I wasn't here [in court]." (Tr. 22.)

{¶ 18} Nevertheless, little evidence was presented that, prior to or on the day he entered his pleas, he was suffering from the same or from the stress and anxiety he purports caused him to black out and not be in his right mind. Dr. Drown testified:

> [O]n June 9th, he said his trial was seven days away. He was alert. He was good energy. Very positive, very self-confident. He definitely looked forward to that moment [of going to trial.].
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> * * *
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> [On June 9th he was] upbeat, yes. * * * He knew that he had to get sharp for this. Every session for awhile, we talked about how to do that. * * * He had not appeared as stressed as he had been on other sessions. He looked very positive. * * * [He was] [n]ot as relaxed as a person who would be who wasn't going to trial like that, but more than he would be in another session.

(Aug. 19, 2014 Tr. 9, 19.)

{¶ 19} Dr. Garas offered no testimony regarding appellant's mental state prior to or at the time of the pleas. In fact, in response to questioning from the state, she testified that she did not see appellant in June and was not able to testify about what his mental state was in June since she had not seen him that month. (Tr. 43.)

{¶ 20} The trial court gave appellant a full opportunity to be heard on his motion and, after duly considering that motion, concluded that appellant did not present a reasonable and legitimate basis for the withdrawal of his pleas. Thus, the fourth and fifth factors also weigh against a finding that the trial court abused its discretion in denying appellant's motion.

{¶ 21} The sixth factor asks us to consider whether appellant made his motion within a reasonable time. Appellant informed his counsel of his desire to withdraw his pleas within several days after he entered his pleas. His counsel filed the written motion within a month of entering the pleas and more than a month prior to when the court had scheduled the sentencing hearing. Therefore, the sixth factor weighs in appellant's favor.

{¶ 22} The seventh factor asks us to consider whether appellant articulated specific reasons for the requested withdrawal. In his motion, appellant argued that he was not in the required mental state to be able to properly enter a plea. He was suffering from migraine headaches due to a lack of sleep and overall stress within his life. He also argued that he did not fully grasp his actions when entering his guilty pleas and that he had undergone psychological treatment that would continue until August of the same year in order to grasp control of his mental condition. At the hearing, appellant recalled changing his pleas and referred to it as "a fuzzy time" and "a fuzzy moment in the day." (Tr. 11.) He testified that, "[d]uring a period of that time that I was in this courtroom, I feel I blacked out. I don't remember – there was a fuzzy period that I don't remember. And it wasn't until I was at the elevators that I snapped out of it." (Tr. 12.) Appellant indicated that he did not think the medications affected his decision-making but, rather, "I think that I had a nervous breakdown and I just broke. That's what I believe did it. That's why I asked to withdraw the plea deal." (Tr. 25-26.) Appellant testified that the weekend before the trial started he was "ready to go * * * ready to go with the trial * * * ready to go." (Tr. 35.) He said that he did not have any psychological issues or any feelings and that he felt fine.

{¶ 23} As noted above, in our discussion of the fourth and fifth factors, the trial court, based on the evidence presented, rejected appellant's reasons. The seventh factor weighs against appellant.

{¶ 24} The eighth factor considers whether appellant understood the nature of the charges against him and the possible penalties. In our discussion of the third factor, we noted the trial court's consideration of the Crim.R. 11 hearing. As noted above, the record provided to this court did not contain a transcript of the Crim.R. 11 hearing. Therefore, we accept the trial court's summary of the same and agree with the trial court that the guilty pleas were knowingly, intelligently, and voluntarily entered. Accordingly, the eighth factor also weighs against appellant.

{¶ 25} Under the ninth and final consideration, we look to whether appellant had possible defenses to the charges against him. With regard to this factor, the court considered whether appellant had a colorable case that might result in acquittal if it were tried. The court noted that, although appellant testified that he had good defenses to the charges against him, he did not elaborate or explain why he thinks the state's cases were weak. The court further noted that it was never fully explained at the hearing how appellant's four potential witnesses fit into whatever explanation he planned to offer. Finally, the court considered that appellant had three prior felony convictions which could be used to impeach him at trial and that he had made voluntary statements to a Bureau of Workers' Compensation agent and at Industrial Commission hearings, which included admissions against his interest.

{¶ 26} Appellant maintains his own innocence but, even if we conclude appellant's belief in his own innocence is enough to make the ninth factor weigh in his favor, the overwhelming majority of these nine factors weigh against appellant.

{¶ 27} We are mindful that presentence motions to withdraw pleas should be freely and liberally granted. Nevertheless, after weighing the factors outlined above and in consideration of the trial court's thoughtful and detailed decision, we cannot conclude that the trial court abused its discretion in denying appellant's motion to withdraw his pleas. Accordingly, we overrule appellant's sole assignment of error.

{¶ 28} For the foregoing reasons, appellant's assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

TYACK and LUPER SCHUSTER, JJ., concur.

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