

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

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|---------------------------|---|-----------------------------|
| STATE OF OHIO, | : | O P I N I O N |
| Plaintiff-Appellee, | : | |
| - vs - | : | CASE NO. 2011-T-0095 |
| CALVIN BERNARD COLE, SR., | : | |
| Defendant-Appellant. | : | |

Criminal Appeal from the Court of Common Pleas, Case No. 2010 CR 00290.

Judgment: Affirmed.

Dennis Watkins, Trumbull County Prosecutor, and *LuWayne Annos*, Assistant Prosecutor, Administration Building, 160 High Street, N.W., Warren, OH 44481-1092 (For Plaintiff-Appellee).

Mark I. Verkhlin, 839 Southwestern Run, Youngstown, OH 44514 (For Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, Calvin Bernard Cole, Sr., appeals the trial court's September 2, 2011 judgment entry, in which, after entering a plea of guilty to receiving stolen property in violation of R.C. 2913.51(A) and (C), he was sentenced to serve six months in the Trumbull County Jail.

{¶2} Appellant was sentenced on August 25, 2011, to serve six months in the Trumbull County Jail. The September 2, 2011 sentencing entry indicates that appellant

was given credit for time served for the following dates: “April 19, 2010 to June 3, 2010; and from 8/25/11 to [9/2/11].”

{¶3} On August 29, 2011, appellant filed a pro se motion to withdraw his guilty plea. Before the trial court ruled on appellant’s motion, he filed a notice of appeal in this court. Therefore, this court remanded the matter for a ruling on appellant’s motion to withdraw his guilty plea. In a May 3, 2012 judgment entry, the trial court denied appellant’s motion, “as there has been no showing of manifest injustice or any other basis for granting such motion.” We now address appellant’s appeal.

{¶4} Appellant assigns the following errors:

{¶5} “[1.] The trial court erred by denying Mr. Cole’s motion to withdraw his guilty plea.

{¶6} “[2.] The trial court erred by failing to determine if Mr. Cole was due jail time credit.”

{¶7} Appellant’s second assignment of error is moot. On August 25, 2011, Cole was sentenced to serve six months in jail with credit for time served, the balance of which has been served. Therefore, the argument relating solely to the imposition of his jail sentence is rendered moot. See *State v. Corpening*, 11th Dist. No. 2005-A-0058, 2006-Ohio-5290, ¶6.

{¶8} In his first assignment of error, appellant maintains that it was error for the trial court to deny appellant’s motion to withdraw his guilty plea without a hearing.

{¶9} Crim.R. 32.1 governs the withdrawal of a plea. Crim.R. 32.1 provides:

{¶10} “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.”

{¶11} Therefore, after sentencing, a defendant has the burden of demonstrating the existence of manifest injustice to withdraw a guilty or no contest plea. *State v. Smith*, 49 Ohio St.2d 261 (1977), paragraph one of the syllabus. “The logic behind this precept is to discourage a defendant from pleading guilty to test the weight of potential reprisal, and later withdraw the plea if the sentence was unexpectedly severe.” *State v. Wynn*, 131 Ohio App.3d 725, 728 (8th Dist.1998). Since appellant filed the motion to withdraw his guilty plea after he was sentenced, he bore the substantial burden of demonstrating the existence of a manifest injustice. Crim.R. 32.1.

{¶12} On a post-sentence motion to withdraw a guilty plea, the decision of the trial court will not be disturbed absent an abuse of discretion. *Smith, supra*, paragraph two of the syllabus.

{¶13} On appeal, appellant also argues the trial court erred in not conducting an evidentiary hearing on his motion to withdraw his guilty plea.

{¶14} ‘While 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 if the request is made after the trial court has already sentenced the defendant. [*State v. Xie*, 62 Ohio St.3d 521, paragraph one of the syllabus (1992).] In those situations where the trial court must consider a post-sentence motion to withdraw a guilty plea, a hearing is only required if the facts alleged by the defendant, and accepted as true, would require withdrawal of the plea.

Id.' (Citation omitted.) *State v. Gibson*, 11th Dist. No. 2007-P-0021, 2007-Ohio-6926, ¶32.

{¶15} We observe that in his pro se motion to withdraw his guilty plea, appellant failed to assert any facts that would form a legal basis for withdrawal of the plea—he merely stated that he wished to withdraw his guilty plea. Consequently, the trial court was not required to hold a hearing on said motion and did not abuse its discretion in denying the request.

{¶16} Appellant's first assignment of error is without merit.

{¶17} Based on the opinion of this court, the judgment of the Trumbull County Court of Common Pleas is hereby affirmed.

MARY JANE TRAPP, J.,

THOMAS R. WRIGHT,

concur.