

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

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2011-T-0119
MICHAEL D. DOLL,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 2003 CR 00269.

Judgment: Affirmed.

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

Rhonda L. Granitto Santha, 6401 State Route 534, Farmington, OH 44491 (For Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, Michael D. Doll, appeals the judgment of the Trumbull County Court of Common Pleas, denying his motion to withdraw his guilty plea. At issue is whether the trial court abused its discretion in finding a lack of manifest injustice to support a withdrawal of the plea. For the reasons that follow, the judgment is affirmed.

{¶2} In October 2003, appellant pled guilty to involuntary manslaughter, a first-degree felony in violation of R.C. 2903.04(A) and (C), amended from the initial charge of

aggravated murder. Appellant additionally pled guilty to aggravated robbery, a first-degree felony in violation of R.C. 2911.01(A)(1) and (C), and aggravated burglary, a first-degree felony in violation of R.C. 2911.11(A)(2) and (B). A firearm specification was attached to each charge. The trial court accepted appellant's plea, and appellant was sentenced to 20 years in prison. Appellant did not file a direct appeal.

{¶3} In July 2010, appellant filed a motion for judicial release. In September 2010, the trial court denied the motion. In June 2011, appellant, pursuant to Crim.R. 32.1, filed a motion to withdraw his guilty plea. Several motions in support followed. Appellant stated three grounds for his motion: (1) the trial court and his trial counsel incorrectly stated that he was eligible for judicial release; (2) the prosecution failed to disclose favorable evidence, i.e., a negative gun residue test of appellant's hands; and (3) his trial counsel was ineffective for failing to correct statements of fact during the plea hearing and for failing to request the results of the gun residue test. In support, appellant attached his own affidavit, a transcript of the plea hearing, and a copy of the gun residue test.

{¶4} The trial court denied appellant's motion after a hearing on the matter was held. Appellant timely appeals and asserts two assignments of error for consideration by this court:

{¶5} [1.] The trial court abused [its] discretion and committed prejudicial error in denying appellant's motion to with-draw [sic] his plea of guilty, which plea [sic] contravenes Criminal Rule 11(C)(2)(a), in refusing to recognize the court's failure during the plea/sentencing hearing to determine that the defendant understood that he was not

eligible for judicial release, and in fact, giving the defendant incorrect information causing him to believe he was eligible during said hearing, thus inducing the plea of guilty and causing said plea to be one which was neither knowing nor intelligent, as required by Criminal Rule 11 and by Ohio and federal case law, and resulting in a substantial injustice, resulting in defendant serving a 20-year prison term based upon an invalid plea of guilty, having already served eight (8) plus years.

{¶6} [2.] The trial court abused its discretion and committed prejudicial error in denying appellant's motion to withdraw his plea of guilty on the grounds that appellant's plea was not intelligent or knowing, resulting in substantial injustice, due to ineffective assistance of counsel who allowed the prosecution to give false and prejudicial information to the court without challenging same [sic] during said plea/sentencing hearing, thereby allowing the court to believe that appellant was the shooter in the killing of a victim, which allegation was disproved by a negative gunshot residue test.

{¶7} An appellate court analyzes a trial court's decision regarding a motion to withdraw a guilty plea based on an abuse of discretion standard of review. *State v. Gibbs*, 11th Dist. No. 98-T-0190, 2000 Ohio App. LEXIS 2526 (June 9, 2000), *6-7. An abuse of discretion is the trial court's "failure to exercise sound, reasonable, and legal decision-making." *State v. Beechler*, 2d Dist. No. 09-CA-54, 2010-Ohio-1900, ¶62, quoting *Black's Law Dictionary* 11 (8th Ed.2004).

{¶8} Crim.R. 32.1 provides for a withdrawal of a guilty plea, stating “[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.”

{¶9} Here, appellant filed his motion to withdraw his plea nearly a decade after his sentencing. Thus, pursuant to Crim.R. 32.1, appellant must have demonstrated manifest injustice to be entitled to relief. “Under this higher standard [of manifest injustice], a defendant is entitled to prevail on the motion only if the existence of extraordinary circumstances has been established.” (Citations omitted.) *State v. Combs*, 11th Dist. No. 2007-P-0075, 2008-Ohio-4158, ¶34. Additionally, while there is no express time limitation for filing, “an undue delay between the occurrence of the alleged cause for withdrawal of a guilty plea and the filing of a motion under Crim.R. 32.1 is a factor adversely affecting the credibility of the movant and militating against the granting of the motion.” *State v. Smith*, 49 Ohio St.2d 261 (1977), paragraph three of the syllabus.

{¶10} Appellant first sets forth a claim of manifest injustice by asserting the trial court and his trial counsel incorrectly stated that he was eligible for judicial release. Appellant argues that, had he known he was *not* eligible for judicial release, he never would have pled guilty to the amended charges. A review of the plea hearing indicates that appellant had a question about “post release, judicial release” during his plea hearing. This was clarified as post-release control. The trial court stated: “That’s what I understood. He did say post release. Five years is the answer to your question. Has no guarantee you’re going to get it.” There is no indication in the record that the trial

court gave appellant an impression he would be eligible for judicial release. In fact, after appellant informed the court he was 20 years old, the court stated, “[t]wenty years is a long time to sit in prison. When you get out, you would be forty years old. That’s still in the term of things not that old a fellow. You could make something of your life[.]” Additionally, appellant’s signed plea entry expressly indicates he is not eligible for judicial release, the state would oppose judicial release, and the 20-year sentence is jointly agreed upon between the defendant and the state. Appellant affirmed on the record that he read the document.

{¶11} Further, appellant contends he was under the genuine misapprehension that he would be eligible for judicial release after five years of incarceration. However, accepting appellant’s version as fact, we note appellant’s application for judicial release was not filed until he served nearly seven years. It is also worth noting that appellant’s motion to withdraw his guilty plea was filed approximately nine months after his application for judicial release was denied. This additionally raises questions concerning the credibility of appellant’s version of events. See *State v. Cramer*, 5th Dist. No. 2009-CA-00099, 2010-Ohio-2591, ¶17 (affirming no finding of manifest injustice after reviewing contention that the appellant relied on the misguided advice of his attorney concerning judicial release).

{¶12} Appellant next claims he would suffer manifest injustice because the prosecution failed to disclose favorable evidence, i.e., a negative gun residue test of appellant’s hands. Appellant argues that, had he known of the favorable evidence, he never would have pled guilty. As a preliminary matter, this claim is not supported by the record. Instead, the record indicates that the existence of this report was included in the

state's response to defendant's request for discovery. Though the results of the test were not disclosed, the state made appellant aware of this report and where it could be found.

{¶13} Additionally, as to this contention, the meaning of a guilty plea and the scope of a subsequent motion to withdraw that plea must be examined. A plea of guilty "is a complete admission of the defendant's guilt." Crim.R. 11(B)(1). "By entering a plea of guilty, the accused is not simply stating that he did the discrete acts described in the indictment; he is admitting guilt of a substantive crime." *State v. Pugh*, 8th Dist. No. 92633, 2009-Ohio-4374, ¶10, quoting *State v. Gaston*, 8th Dist. No. 92242, 2009-Ohio-3080 and *State v. Kitzler*, 3d Dist. No. 16-02-06, 2002-Ohio-5253, ¶12. Thus, appellant may only attack the voluntary, knowing, and intelligent nature of the plea—not the underlying substantive facts. *Id.* The trial court already evaluated and accepted the recitation of facts supporting the plea in open court. Appellant, after hearing those facts, had the opportunity to speak on the record. Appellant did not protest the factual basis but instead offered his condolences and apologized to the victim's family.

{¶14} Finally, appellant claims his trial counsel was ineffective for failing to correct statements of fact during the plea hearing and for failing to request the results of the gun residue test. Appellant states that his counsel's failure "allowed the court to believe that appellant was the shooter in the killing of a victim, which allegation was disproved by a negative gunshot residue test." This claim is not supported by the record. While appellant treats this gun residue test report as quintessential proof that he could not have been the gunman, the report itself states, "[t]he absence of gunshot primer residue on a person's hands does not preclude the possibility of that person

having discharged a firearm.” Moreover, the record simply does not indicate whether appellant’s trial counsel failed to request or review the results of the gun residue test. On this record, it is equally plausible that appellant’s trial counsel reviewed the gun residue test and determined it held little exculpatory value. Accepting appellant’s version as fact, there is still no indication that appellant suffered manifest injustice. See *State v. Pugh, supra* (affirming no finding of manifest injustice after reviewing argument that trial counsel was ineffective for leading appellant to believe that a particular witness was going to provide adverse testimony at trial).

{¶15} Based on the evidence before the trial court, we find appellant failed to illustrate extraordinary circumstances rising to the level of manifest injustice that would permit a withdrawal of his plea. In addition to the facts outlined above, the record also indicates that the trial court informed appellant of his constitutional rights, the charges, the prospective penalties, and post-release control terms. Appellant affirmed he understood the charges, the elements of the charges, and the possible penalties. Appellant additionally affirmed the following: he understood the rights he was waiving, he read and reviewed the plea agreement with his attorney, and he was satisfied with his attorney’s representation. There is no indication that appellant did not enter his plea voluntarily, knowingly, and intelligently.

{¶16} Also, on review of the motion to withdraw the guilty plea, the trial court required briefing on the matter and held an evidentiary hearing in an effort to determine whether there was a legitimate basis for the withdrawal. See *State v. Xie*, 62 Ohio St.3d 521, paragraph one of the syllabus (1992). Thus, the trial court afforded appellant every opportunity to offer evidence in support of his position. The trial court did not abuse its

discretion in denying appellant's motion. The trial court's conclusion that there was no showing that a manifest injustice occurred is indeed supported by the record and is not the result of a failure to exercise sound, reasonable, and legal decision-making.

{¶17} Appellant's assignments of error are without merit. The judgment of the Trumbull County Court of Common Pleas is affirmed.

DIANE V. GRENDALL, J.,

THOMAS R. WRIGHT, J.,

concur.