

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

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|------------------------|---|----------------------------|
| STATE OF OHIO, | : | O P I N I O N |
| Plaintiff-Appellee, | : | |
| - VS - | : | CASE NO. 2012-L-006 |
| BERNARD J. CORRADETTI, | : | |
| Defendant-Appellant. | : | |

Criminal Appeal from the Lake County Court of Common Pleas, Case No. 11 CR 000353.

Judgment: Affirmed.

Charles E. Coulson, Lake County Prosecutor, and *Teri R. Daniel*, Assistant Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

R. Paul LaPlante, Lake County Public Defender, and *Vanessa R. Clapp*, Assistant Public Defender, 125 East Erie Street, Painesville, OH 44077 (For Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Bernard J. Corradetti, appeals from the judgment of the Lake County Court of Common Pleas denying his post-sentence motion to withdraw his guilty plea. We affirm.

{¶2} On September 1, 2011, appellant pleaded guilty, by way of information, to attempted compelling prostitution, in violation of R.C. 2923.02 and R.C. 2907.21, a felony of the fourth degree, as well as corrupting another with drugs, in violation of R.C.

2925.02(A)(4)(a), also a felony of the fourth degree. The trial court ordered a pre-sentence investigation report.

{¶3} Prior to sentencing, appellant filed a pro se pleading captioned “Motion to Withdraw Guilty Plea, Motion to Dismiss, Motion for Acquittal and Release Defendant.” He also filed a pro se “Addendum to the Motion to Dismiss/Withdraw Guilty Plea/Acquittal” and a pleading, addressed “to whom it may concern” seeking the appointment of a new attorney to his case. With respect to the first two documents, appellant alleged that various law enforcement officers and certain state’s witnesses committed perjury when they lied, under oath, about the events which led to appellant’s arrest. Regarding his motion for appointment of new counsel, appellant alleged, inter alia, he had not seen nor heard from his counsel since he was “forced” to plead guilty. Appellant, however, withdrew each motion at the commencement of the sentencing hearing. Appellant was subsequently sentenced to concurrent, 17-month terms of imprisonment.

{¶4} Several days after imposition of sentence, appellant filed several additional motions; to wit: a “Motion to Vacate Sentence/Petition for Postconviction Relief;” a “Motion to Withdraw Guilty Plea and Dismiss;” and an “Addendum for Motion to Dismiss/Withdraw Guilty Plea/Acquittal.” In these motions, appellant essentially reiterated many of his previous substantive arguments relating to the alleged perjury of arresting officers as well as the state’s witnesses. The trial court denied appellant’s motions without a hearing.

{¶5} Appellant filed a delayed appeal challenging the trial court’s ruling on his post-sentence motions. This court permitted appellant to proceed as it pertained to the

trial court's judgment denying his motion to withdraw his plea; appellant was denied the opportunity to appeal other issues because delayed appeals are not available for judgments on post-conviction relief.

{¶6} Appellant assigns the following error:

{¶7} "The trial court erred to the prejudice of the defendant-appellant by denying his post-sentence motion to withdraw his plea in violation of his due process rights as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Sections 10 and 16, Article I of the Ohio Constitution."

{¶8} Crim.R. 32.1 provides that "[a] motion to withdraw a plea of guilty * * * 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 a defendant to withdraw his plea." A defendant who seeks to withdraw a guilty plea after sentence must establish a manifest injustice. See *e.g. State v. Wilfong*, 11th Dist. No. 2010-L-074, 2011-Ohio-6512, ¶12. "Manifest injustice is determined by examining the totality of the circumstances surrounding the guilty plea. Paramount in this determination is the trial court's compliance with Crim.R. 11(C), evidence of which must show in the record that the accused understood his rights accordingly." *State v. Padgett*, 8th Dist. No. 64846, 1993 Ohio App. LEXIS 3374, *2 (Jul. 1, 1993). A trial court need not hold an evidentiary hearing on a post-sentence motion to withdraw a guilty plea unless the facts as alleged by the defendant suggest a manifest injustice would result if the plea was allowed to stand. *State v. Britford*, 10th Dist. No. 11AP-646, 2012-Ohio-1966, ¶12.

{¶9} The decision whether to grant or deny a post-sentence motion to withdraw a guilty plea is within the sound discretion of the trial court. *State v. Borecky*, 11th Dist.

No. 2007-L-197, 2008-Ohio-3890, ¶14. The good faith, credibility, and weight of the movant's assertions in support of the motion are to be resolved by the trial court. *State v. Smith*, 49 Ohio St.2d 261 (1977), paragraph two of the syllabus. Accordingly, appellate review of the trial court's denial of a post-sentence motion to withdraw a guilty plea is limited to a consideration of whether the lower court abused its discretion. *State v. Pearson*, 11th Dist. Nos. 2002-P-2413 and 2002-P-2414, 2003-Ohio-6962, ¶7. The term "abuse of discretion" is one of art, connoting judgment exercised by a court, which does not comport with reason or the record. *State v. Underwood*, 11th Dist. No. 2008-L-113, 2009-Ohio-2089, ¶30, citing *State v. Ferranto*, 112 Ohio St. 667, 676-678 (1925). Where the record discloses neither a "clear or openly unjust action" nor "an extraordinary and fundamental flaw in the plea proceeding," the denial of a post-sentence motion to withdraw a guilty plea will generally be affirmed. See e.g. *State v. Banks*, 8th Dist. Nos. 83782 and 83783, 2004-Ohio-4478, ¶10.

{¶10} In this case, appellant asserts the trial court should have permitted him to withdraw his plea of guilty, or at least held a hearing on the issue, because his motion demonstrates he had a defense to the state's case and desired to test the evidence. Appellant alleges that, even though he withdrew his pre-sentence motion to withdraw his plea prior to the sentencing hearing, he erroneously did so at his attorney's behest. Finally, because his pre-sentence and post-sentence motion to withdraw his plea essentially set forth the same arguments, appellant maintains his post-sentence motion was not based upon his dissatisfaction with his sentence. Consequently, appellant maintains, at the very least, the trial court should have conducted a hearing to gain a

fuller appreciation of appellant's bases for seeking withdrawal of his guilty plea. We do not agree with appellant's arguments.

{¶11} The record demonstrates that, at his plea hearing, appellant was fully and thoroughly advised of all constitutional and non-constitutional rights he was waiving. First, after being advised of the difference between a bill of information and an indictment, appellant freely chose to waive his right to have his case submitted to the grand jury and proceed by information. Next, the trial court engaged appellant in a complete Crim.R. 11 colloquy. In particular, the court advised appellant that, by pleading guilty, he was waiving: (1) his right to a jury trial; (2) his right to confront his accusers; (3) his right to compulsory process to obtain witnesses; (4) his right to require the state to prove his guilt beyond a reasonable doubt; and (5) his privilege against compulsory self-incrimination. The court further explained the nature of the charges and their practical and legal significance as well as the maximum penalty appellant could face if the court accepted his plea of guilty. Appellant stated he understood the rights he was waiving and the implications of his plea. And, after the prosecutor set forth the factual basis for the charges to which appellant entered his plea, appellant specifically admitted his guilt to each charge.

{¶12} Appellant was afforded the opportunity to deny the charges as well as object to their factual basis at the hearing. At no time did he object or assert his belief that the charges were premised upon police or witness perjury. To the contrary, after being fully apprised of the rights he was waiving and the specific elements of the charges to which he was being offered to plea, appellant unequivocally admitted his

guilt on record. We therefore conclude appellant made a knowing, intelligent, and voluntary plea to the charges at issue.

{¶13} Additionally, although appellant claims he only withdrew his pre-sentence motion to withdraw at his attorney's advice, there is nothing in the record to indicate this advice was questionable or inconsistent with counsel's duty to zealously represent appellant. Anyway, appellant was entitled to refuse this advice and there is nothing on record to suggest the motion was withdrawn without appellant's knowledge or against his will. We therefore discern nothing problematic in the fact that appellant's motion was withdrawn.

{¶14} Appellant had the opportunity to take the matter to trial and test the state's evidence, but, instead, knowingly and voluntarily waived this opportunity without questioning the nature of the evidence the state intended to produce. Although he filed a pre-sentence motion, he voluntarily withdrew it and, as a result, that motion is legally inconsequential. Appellant's vacillation reflects a struggle with his decision to plea. Such "changes of heart" are not uncommon. It is well established, however, that a change of heart is insufficient to serve as a basis for withdrawing one's plea. See e.g. *State v. Kimble*, 11th Dist. No. 2005-T-0085, 2006-Ohio-6096, ¶16.

{¶15} Appellant's assertions of innocence and witness perjury demonstrate appellant now desires to challenge the state's evidence at trial. Such a desire, however, is not so remarkable to suggest a manifest injustice would occur by permitting the plea to stand. Thus, appellant was not entitled to a hearing on his post-sentence motion. Furthermore, because appellant entered his plea knowingly and voluntarily and there are no clear flaws in the plea proceedings, we perceive no injustice in the trial

court's decision to deny his post-sentence motion to withdraw. We therefore hold the trial court did not abuse its discretion in denying the motion without a hearing.

{¶16} Appellant's sole assignment of error lacks merit.

{¶17} For the reasons discussed in this opinion, the judgment of the Lake County Court of Common Pleas is hereby affirmed.

DIANE V. GRENDALL, J.,

MARY JANE TRAPP, J.,

concur.