

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

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2014-A-0056
DEANTHONY B. CURRY,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Ashtabula County Court of Common Pleas.
Case No. 2011 CR 271.

Judgment: Affirmed.

Nicholas A. Iarocci, Ashtabula County Prosecutor, and *Shelley M. Pratt*, Assistant Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047-1092 (For Plaintiff-Appellee).

DeAnthony B. Curry, pro se, PID: A622-007, Lake Erie Correctional Institution, 501 Thompson Road, P.O. Box 8000, Conneaut, OH 44030 (Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, DeAnthony Curry, appeals from the judgment of the Ashtabula County Court of Common Pleas overruling his motion to withdraw his guilty plea. We affirm.

{¶2} Appellant pled guilty to attempted complicity to aggravated robbery, a felony of the second degree. At the sentencing hearing, appellant was advised that he was sentenced to four years in prison with a three-year term of post-release control.

State v. Curry, 11th Dist. Ashtabula No. 2012-A-0006, 2013-Ohio-2256. This court reversed and remanded the judgment of the trial court solely in regard to the imposition of the additional fees and costs under R.C. 2929.18(A)(4). *Id.* at ¶9.

{¶3} Appellant was resentenced on July 18, 2013, following this court's remand order. Appellant then filed a second appeal, seeking to appeal the trial court's resentencing entry. *State v. Curry*, 11th Dist. Ashtabula No. 2013-A-0071, 2014-Ohio-5375. This court construed appellant's "Notice for Review of Judgment" as a motion for leave to file a delayed appeal; we held that appellant's motion for leave was procedurally defective, and this court, therefore, was without discretion to allow his "delayed appeal." *Id.* at ¶11.

{¶4} On April 11, 2014, appellant filed a motion to withdraw his guilty plea, which was overruled by an April 29, 2014 judgment entry of the trial court. Appellant did not appeal the April 29, 2014 judgment. Thereafter, on May 23, 2014, appellant filed a successive motion to withdraw his guilty plea. The trial court denied the successive motion to withdraw his plea in an August 11, 2014 judgment entry. Appellant filed the instant appeal of the trial court's denial of his May 23, 2014 motion to withdraw his guilty plea. Appellant filed an appellate brief, and the state filed a response. Appellant filed a "request to file a supplemental brief," which was granted by this court. Thereafter, appellant filed a reply brief which was also considered by this court on appeal.

{¶5} On appeal, appellant asserts the following assignments of error:

[1.] The appellant was deprived the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendment[s] to the United States Constitution and Article I, Section 10 of the Ohio Constitution.

[2.] The trial court erred to the prejudice of the [appellant] by not compelling the state to provide the discovery under Ohio Crim.R.16 and Bill of Particulars to the defense. The [appellant] was denied due process under the Fourteenth Amendment to the United States Constitution and Article I, Section 10 under the Ohio Constitution.

[3.] When the trial court accepted his guilty plea pursuant to [R.C.] 2937.09, the [appellant] was deprive[d] due process and his right to confrontation under the Fourteenth Amendment to the United States Constitution and Article I, Section 10 of the Ohio Constitution.

{¶6} Crim.R. 32.1 provides for 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.”

{¶7} Here, appellant filed a motion to withdraw his plea 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.” *State v. Combs*, 11th Dist. Portage No. 2007-P-0075, 2008-Ohio-4158, ¶34. “The reason for such a high standard for granting a post-sentence motion to withdraw a guilty plea ‘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. Clark*, 11th Dist. Ashtabula No. 2009-A-0038, 2010-Ohio-1491, ¶13, quoting *State v. Caraballo*, 17 Ohio St.3d 66, 67 (1985).

{¶8} However, claims raised in a post-sentence motion to withdraw a guilty plea which were raised or could have been raised in a direct appeal are barred by res judicata. See, e.g., *State v. Lorenzo*, 11th Dist. Lake No. 2007-L-085, 2008-Ohio-1333,

¶21; *State v. Green*, 11th Dist. Ashtabula Nos. 2005-A-0069 & 2005-A-0070, 2006-Ohio-6695, ¶13; and *State v. McDonald*, 11th Dist. Lake No. 2003-L-155, 2004-Ohio-6332, ¶22. Appellant's assignments of error challenge matters which were or could have been argued on direct appeal or in appellant's previous motion to withdraw his plea, which was never appealed.

{¶9} Pursuant to the doctrine of res judicata,

a final judgment of conviction bars a convicted defendant who was represented by counsel from raising and litigating in any proceeding except an appeal from that judgment, any defense or any claimed lack of due process that was *raised or could have been raised by the defendant at the trial*, which resulted in that judgment of conviction, or *on an appeal* from that judgment.

State v. Perry, 10 Ohio St.2d 175 (1967), paragraph nine of the syllabus (emphasis sic.).

{¶10} Here, the arguments appellant asserts in his Crim.R. 32.1 motion were based on ineffective assistance of trial counsel during plea bargaining. Each assertion raised by appellant—ineffective assistance of counsel, inadequate discovery, and the failure to enter into a plea knowingly and voluntarily—were based upon information available to appellant at the time of his direct appeal. In addition, each of the foregoing assignments of error pertains to issues that (1) could have been raised on appellant's direct appeal or (2) amount to an appeal from a prior final order that was not appealed. They are, therefore, barred by the doctrine of res judicata.

{¶11} Appellant's first, second, and third assignments of error are without merit.

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

DIANE V. GRENDELL, J.,

COLLEEN MARY O'TOOLE, J.,

concur.