

**COURT OF APPEALS
THIRD APPELLATE DISTRICT
MARION COUNTY**

STATE OF OHIO

PLAINTIFF-APPELLEE

CASE NO. 9-2000-35

v.

ERIC HENDRICKS

OPINION

DEFENDANT-APPELLANT

STATE OF OHIO

PLAINTIFF-APPELLEE

CASE NO. 9-2000-39

v.

ERIC HENDRICKS

OPINION

DEFENDANT-APPELLANT

**CHARACTER OF PROCEEDINGS: Criminal Appeals from Common Pleas
Court**

JUDGMENTS: Judgments affirmed.

DATE OF JUDGMENT ENTRIES: August 15, 2000

ATTORNEYS:

**ERIC HENDRICKS
Inpropria Persona
Inmate #287-056
P. O. Box 1812
Marion, Ohio 43302
Appellant**

JIM SLAGLE
Prosecuting Attorney
Reg. #0032360
133 ½ East Center Street
Marion, Ohio 43302
For Appellee

HADLEY, P. J. The defendant-appellant, Eric Hendricks (“appellant”), appeals the judgment of the Marion County Court of Common Pleas denying his motion to withdraw his guilty plea. For the following reasons, we affirm the judgment of the trial court.

On September 30, 1993, the appellant was indicted on one count of kidnapping, one count of intimidation of a crime victim, a physical harm specification, and a firearm specification. (Marion County Case No. 93-CR-150). On October 22, 1993, the appellant was indicted on two counts of aggravated burglary, one count of having weapons under disability, two counts of kidnapping, and a firearm specification. (Marion County Case No. 93-CR-172).

The indictments were combined and on December 29, 1993, the appellant pled guilty to an amended indictment which included one count of abduction, one count of intimidation of a victim, one count of aggravated burglary, and one count of kidnapping. The remaining charges were dismissed. The trial court sentenced the appellant to three to ten years (3-10) on the abduction charge, two (2) years on the intimidation of a victim charge, and three to fifteen (3-15) years on each of the

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aggravated burglary and kidnapping charges. All the sentences were ordered served concurrently.

On March 1, 2000, the appellant filed a motion to withdraw his guilty plea. He contends that the indictments did not comport with the requirements set forth in the Ohio Revised Code. On April 17, 2000, the trial court denied the appellant's motion. It is from this judgment that the appellant now appeals.

The appellant is appearing before this Court pro se. Appellate Rule 16 sets forth the necessary contents of an appellate brief. While Appellant's brief includes most the requisite parts, he fails to set forth a statement of assignments of error presented for review. The heading "Assignment of Error" is used, but following such is a two and one-half page recitation that appears more likely to be the appellant's argument. After a thorough review of all the materials timely submitted by the appellant, it appears that he is claiming that he should have been permitted to withdraw his guilty plea due to various defects in the indictment. Specifically, the indictment was entitled "Bill of Indictment," the foreman of the jury failed to endorse it as a "True Bill," and the indictment does not contain the words "against the peace and dignity of the State of Ohio."

Criminal Rule 12(B)(2) specifically mandates that "objections based upon defects in the indictment" must be raised before trial. Crim.R. 12(G) further holds that the failure to raise such objection results in a waiver of the objection. *State v.*

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Chism (Sept. 29, 1999), Mahoning App. No. 98-CA-121, unreported. Under the provisions of Crim.R. 12(B), it is incumbent on the defendant, in order to preserve his right on appeal, to object to his indictment on the ground that it was defective before his guilty plea was entered. *State v. Miranda* (Apr. 16, 1992), Cuyahoga App. Nos. 59924 and 59925, unreported; citing, *State v. James* (1980), 68 Ohio App.2d 227. Therefore, other than plain error, a defendant waives any argument concerning the validity of the indictment if such argument is not raised before trial. Crim.R. 53(B); *State v. Frazier* (1995), 73 Ohio St.3d 323, 332. Plain error does not exist unless it can be said that but for the error, the outcome of the trial would clearly have been otherwise. *State v. Joseph* (1995), 73 Ohio St.3d 450, 455.

In the case *sub judice*, the appellant pled guilty to an amended indictment seven years prior to the filing of the motion to withdraw guilty plea. There is no evidence on the record that the appellant objected to the alleged defects in the indictment prior to entering his guilty plea. While the appellant hints in his brief that his plea was coerced, he provides no evidence in support of this contention. Nothing in the record before this Court indicates that the appellant's plea was anything but knowingly and voluntary made. This case clearly does not rise to the level of plain error. Accordingly, the appellant's assignment of error is overruled.

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Having found no error prejudicial to the appellant herein, in the particulars assigned and argued, we affirm the judgment of the trial court.

Judgment affirmed.

SHAW and BRYANT, JJ., concur.

/jlr