

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

vs.

JAMES HARRISON, JR.

Defendant-Appellant

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JUDGES:

Hon. John F. Boggins, P.J.
Hon. William B. Hoffman, J.
Hon. Sheila G. Farmer, J.

Case No. 2004CA00211

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Court of Common Pleas,
Case No. 2003CR0851(B)

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

January 24, 2005

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Farmer, J.

{¶1} On July 11, 2003, the Stark County Grand Jury indicted appellant, James Harrison, Jr., on one count of illegal manufacture of drugs in violation of R.C. 2925.04, one count of illegal assembly or possession of chemicals for the manufacture of drugs in violation of R.C. 2925.041 and one count of aggravated possession of drugs in violation of R.C. 2925.11. Thereafter, the state amended the illegal manufacture of drugs to illegal assembly or possession of chemicals for the manufacture of drugs.

{¶2} On September 12, 2003, appellant pled guilty to all three counts. A sentencing hearing was held on October 20, 2003. During the hearing, appellant stated he wished to withdraw his guilty pleas. The trial court entertained the motion and denied same. By judgment entry filed October 20, 2003, the trial court sentenced appellant to a total aggregate term of four years in prison.

{¶3} On March 23, 2004, appellant filed a motion to vacate plea. By judgment entry filed June 8, 2004, the trial court denied the motion.

{¶4} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

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{¶5} "THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO WITHDRAW HIS GUILTY PLEA."

I

{¶6} Appellant claims the trial court erred in denying his post-sentence motion to vacate plea. We disagree.

{¶7} Crim.R. 32.1 governs withdrawal of guilty plea and states "[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." The right to withdraw a plea is not absolute and a trial court's decision on the issue is governed by the abuse of discretion standard. *State v. Smith* (1977), 49 Ohio St.2d 261. In order to find an abuse of discretion, we must determine the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217.

{¶8} In support of his argument that a manifest injustice has occurred, appellant attaches to his appellate brief the transcripts of his September 12, 2003 plea hearing and October 20, 2003 sentencing hearing. Prior to his sentencing, appellant attempted to withdraw his guilty pleas, stating he was not guilty and only pled so "out of fear." October 20, 2003 T. at 6. After a lengthy discourse, the trial court denied the request. *Id.* at 7-14. The trial court explained to appellant his right to appeal the decision (*Id.* at 13-14), but no appeal was taken.

{¶9} Thereafter, on March 23, 2004, appellant filed a motion to vacate plea, claiming the trial court erred in denying his presentence motion. By judgment entry filed June 8, 2004, the trial court denied this post-sentence motion, finding no new evidence or reasoning was presented to establish a manifest injustice.

{¶10} Appellant appealed this decision and now argues his presentence request was not adequately addressed by the trial court and he was denied the opportunity to state his reasons for the request. We find this argument not to be well taken. Any

challenge to the trial court's presentence method and procedure should have been exercised by a timely direct appeal. Further, a total reading of the October 20, 2003 transcript and the motion to vacate plea establishes that appellant's position was fully presented to the trial court. Appellant makes much ado about the trial court telling him to "keep your mouth closed." October 20, 2003 T. at 9. We note the trial court made this statement after appellant attempted to interrupt the trial court's discourse. Id.

{¶11} Upon review, we find the trial court did not abuse its discretion in denying appellant's motion to vacate plea.

{¶12} The sole assignment of error is denied.

{¶13} The judgment of the Court of Common Pleas of Stark County, Ohio is hereby affirmed.

By Farmer, J.

Boggins, P.J. and

Hoffman, J. concur.

JUDGES

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

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JUDGMENT ENTRY

CASE NO. 2004CA00211

For the reasons stated in the Memorandum-Opinion on file, the judgment of the Court of Common Pleas of Stark County, Ohio is affirmed.

JUDGES