

[Cite as *State v. McLaurin*, 2009-Ohio-2979.]

COURT OF APPEALS  
MUSKINGUM COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

STEVEN F. McLAURIN

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P. J.

Hon. John W. Wise, J.

Hon. Julie A. Edwards, J.

Case No. CT2008-0052

O P I N I O N

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common  
Pleas, Case No. CR2008-0071

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

June 23, 2009

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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ASSISTANT PROSECUTOR  
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*Wise, J.*

{¶1} Defendant-Appellant Steven F. McLaurin appeals his conviction and sentence entered by the Muskingum County Court of Common Pleas on one count of permitting Drug Abuse, in violation of R.C. 2925.13(B).

{¶2} Plaintiff-Appellee is the State of Ohio.

**STATEMENT OF THE CASE AND FACTS**

{¶3} On or about January 9, 2008, Defendant-Appellant, Steven F. McLaurin, was indicted by the Muskingum County Grand Jury upon one (1) count of Trafficking in Crack Cocaine, in violation of R.C. §2925.03(C)(4)(A), a felony of the fifth degree; (1) count of Possession of Crack Cocaine, in violation of R.C. §2925.11(C)(4)(A), a felony of the fifth degree with a forfeiture specification; and one count of Possession of Marijuana, a minor misdemeanor. This case was assigned case number CR2008-0018.

{¶4} Defendant-Appellant's wife, Wilsie, was indicted on similar charges on the same date and assigned case number CR2008-0019.

{¶5} On January 16, 2008, Defendant-Appellant appeared in court and pled "Not Guilty" to the indictment.

{¶6} On March 14, 2008, this matter came before the court upon Defendant-Appellant's Motion to Suppress. However, after negotiation by the parties, the motion was withdrawn by Defendant-Appellant and he agreed to enter a plea of "guilty" to a charge of Permitting Drug Abuse, in violation of R.C. §2925.13(B), a felony of the fifth degree.

{¶17} On that date, the State prepared and filed a Bill of Information which charged Defendant-Appellant with a violation of R.C. §2925.13(B). This case was assigned case number CR2008-0071. According to the plea agreement, the State agreed to dismiss the charges pending in case CR2008-0018 after the Defendant-Appellant was sentenced upon the Bill of Information. The trial court accepted Appellant's plea of "guilty" and ordered that a pre-sentence investigation be conducted.

{¶18} Defendant-Appellant's court-appointed attorney withdrew from both cases for the reason that he and Defendant-Appellant disagreed on the question of whether Defendant should attempt to withdraw his plea of "guilty" in case CR20080071. Counsel also alleged that Defendant-Appellant had accused him of malpractice in connection with the cases. Subsequently, the Court appointed new counsel, who, after conferring with Defendant, advised the Court that Defendant/Appellant desired to proceed to sentencing.

{¶19} On July 7, 2008, this matter came on for sentencing. However, prior to the hearing, Defendant-Appellant's counsel informed the trial court that Defendant-Appellant again desired to withdraw his "guilty" plea. At that time, the trial court granted a continuance of the sentencing hearing to allow Defendant-Appellant and his attorney to confer and to formalize his request to withdraw his plea in a written motion. Although no formal motion to withdraw plea was ever filed, Defendant-Appellant filed a hand-written document in case CR2008-0018 which he has captioned as "NOTICE TO APPEAL/ASSIGNMENT OF COUNSEL."

{¶10} On August 25, 2008, Defendant-Appellant came before the trial court for a hearing on the "motion to withdraw plea." At that time, Defendant-Appellant testified that

at the time of the change-of-plea hearing, he suffered from "diminished capacity" due to a recent tooth extraction. Upon consideration of Appellant's motion, the transcript of the change of plea hearing, and Defendant-Appellant's testimony, the trial court found no merit to the motion and denied same.

{¶11} The trial court proceeded to sentence Defendant-Appellant in accordance with the agreement of the parties. At the time of the sentencing hearing, Defendant-Appellant had served the necessary time so the trial court ordered his release.

{¶12} Defendant-Appellant now appeals, assigning the following errors for review:

### **ASSIGNMENTS OF ERROR**

{¶13} "I. THE DEFENDANT-APPELLANT'S PLEA WAS UNKNOWING, UNINTELLIGENT AND INVOLUNTARY.

{¶14} "II. THE TRIAL COURT ERRED IN NOT ALLOWING THE DEFENDANT-APPELLANT TO WITHDRAW HIS PLEA PRIOR TO SENTENCING."

#### **I.**

{¶15} In his first assignment of error, Appellant asserts his guilty plea was not voluntary, knowing, or intelligent, because the trial court failed to inform him of his constitutional right to a unanimous jury verdict. We disagree.

{¶16} In *State v. Ketterer*, 111 Ohio St.3d 70, 2006-Ohio-5283, 855 N.E.2d 48, the Ohio Supreme Court reviewed a defendant's claim the trial court did not adequately inform him of his rights. *Ketterer* cited *State v. Jells* (1990), 53 Ohio St.3d 22, 559 N.E.2d 464, wherein paragraph one of the syllabus, the court held there was no requirement for a trial court to interrogate a defendant in order to determine whether he

or she is fully apprised of the right to a jury trial. The *Ketterer* court explained the trial court was not required to specifically advise the defendant on the need for jury unanimity, *Ketterer*, supra at paragraph 68., citing *State v. Bays* (1999), 87 Ohio St.3d 15, 716 N.E.2d 1126, which in turn cited *United States v. Martin* (C.A.6 1983), 704 F.2d 267. In *Bays*, the Supreme Court held “a defendant need not have a complete or technical understanding of the jury trial right in order to knowingly and intelligently waive it,” *Ketterer*, paragraph 68.

{¶17} This Court, along with several courts, including the Ohio Supreme Court, has held there is no requirement that a trial court inform a defendant of his right to a unanimous verdict. *State v. Dooley*, Muskingum App. No. CT2008-0055, 2009-Ohio-2095; *State v. Hamilton*, Muskingum App. No. CT2008-0011, 2008-Ohio-6328; *State v. Fitzpatrick*, 102 Ohio St.3d 321, 2004-Ohio-3167, at ¶ 44-46 (accused need not be told that jury unanimity is necessary to convict and to impose sentence); *State v. Smith*, Muskingum App. No. CT2008-0001, 2008-Ohio-3306 at ¶ 27 (there is no explicit requirement in Crim.R. 11(C)(2)(a) that a defendant be informed of his right to a unanimous verdict); *State v. Williams*, Muskingum App. No. CT2007-0073, 2008-Ohio-3903 at ¶ 9 (the Supreme Court held an accused need not be told the jury verdict must be unanimous in order to convict); *State v. Barnett*, Hamilton App. No. C-060950, 2007-Ohio-4599, at ¶ 6 (trial court is not required to specifically inform defendant that she had a right to a unanimous verdict; defendant's execution of a written jury trial waiver and guilty plea form, as well as her on-the-record colloquy with the trial court about these documents, was sufficient to notify her about the jury trial right she was foregoing); *State v. Goens*, Montgomery App. No. 19585, 2003-Ohio-5402, at ¶ 19; *State v. Pons*

(June 1, 1983), Montgomery App. No. 7817 (defendant's argument that he be told that there must be a unanimous verdict by the jury is an attempted super technical expansion of Crim.R. 11); *State v. Small* (July 22, 1981), Summit App. No. 10105 (Crim.R. 11 does not require the court to inform the defendant that the verdict in a jury trial must be by unanimous vote).

{¶18} Appellant asks us to find in his favor notwithstanding the Supreme Court precedent, but this Court must apply Ohio law as directed by the Supreme Court. We have reviewed the record, and we find the trial court and the plea form adequately explained Appellant's constitutional rights.

{¶19} Appellant's first assignment of error is overruled.

## II.

{¶20} In his second assignment of error, Appellant contends the trial court erred in not allowing him to withdraw his guilty plea prior to sentencing. We disagree.

{¶21} Crim R. 32.1, provides in relevant part:

{¶22} "A motion to withdraw a plea of guilty or no contest may be made only before sentence is imposed \* \* \*."

{¶23} In *State v. Xie* (1992), 62 Ohio St.3d 521, 527, the Ohio Supreme Court explained the mandates of Crim.R. 32.1 as follows: "The rule requires a defendant to show that the proceeding during which he entered that plea was extraordinarily and fundamentally flawed. [A] presentence motion to withdraw a guilty plea should be freely and liberally granted. Nevertheless, it must be recognized that a defendant does not have an absolute right to withdraw a plea prior to sentencing. Therefore, the trial court

must conduct a hearing to determine whether there is a reasonable and legitimate basis for the withdrawal of the plea.”

{¶24} The decision to grant or deny such motion is entirely within the trial court's discretion. Accordingly, we will not alter a trial court's decision absent a showing of an abuse of discretion. *Xie, supra*; *State v. Peterseim* (1980), 68 Ohio App.2d 211, at syllabus.

{¶25} “A trial court does not abuse its discretion in overruling a motion to withdraw: (1) where the accused is represented by highly competent counsel, (2) where the accused was afforded a full hearing, pursuant to Crim.R. 11, before he entered the plea, (3) when, after the motion to withdraw is filed, the accused is given a complete and impartial hearing on the motion, and (4) where the record reveals that the court gave full and fair consideration to the plea withdrawal request.” *State v. Johnson*, Cuyahoga App. No. 83350, 2004-Ohio-2012, citing *Peterseim, supra*.

{¶26} Upon review, we find the trial court did not abuse its discretion when it denied Appellant's motion to withdraw his guilty plea.

{¶27} The record reflects that at his plea hearing, Appellant was represented by competent counsel and was afforded a full hearing pursuant to Crim.R. 11. Appellant denied being threatened or promised anything in exchange for pleading guilty. The trial court asked Appellant several times if he was sure he wanted to plead guilty.

{¶28} The record also reflects that Appellant was given a full and impartial hearing on his motion to withdraw guilty plea, and that the trial court gave full and fair consideration to the plea withdrawal request. It was within the trial court's province to determine whether Appellant's arguments in support of his motion were reasonable and

legitimate. We defer to the trial court's judgment in evaluating the "good faith, credibility and weight" of Appellant's motivation and assertions in entering and attempting to withdraw his plea. See, *Xie*, 62 Ohio St.3d at 525. We therefore do not find the trial court's decision was unreasonable, arbitrary or unconscionable.

{¶29} Appellant's second assignment of error is overruled.

{¶30} For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Muskingum County, Ohio, is affirmed.

By: Wise, J.

Hoffman, P. J., and

Edwards, J., concur.

/S/ JOHN W. WISE\_\_\_\_\_

/S/ WILLIAM B. HOFFMAN\_\_\_\_\_

/S/ JULIE A. EDWARDS\_\_\_\_\_

JUDGES

JWW/d 514



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

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
STEVEN F. McLAURIN	:	
	:	
Defendant-Appellant	:	Case No. CT2008-0052

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Muskingum County, Ohio, is affirmed.

Costs assessed to Appellant.

/S/ JOHN W. WISE\_\_\_\_\_

/S/ WILLIAM B. HOFFMAN\_\_\_\_\_

/S/ JULIE A. EDWARDS\_\_\_\_\_

JUDGES