

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
Plaintiff-Appellee	:	Hon. W. Scott Gwin, J.
	:	Hon. Julie A. Edwards, J.
-vs-	:	
	:	
RONALD LEE	:	Case No. 2009CA00097
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas,
Case No. 2008CR1944

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: October 13, 2009

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Farmer, P.J.

{¶1} On December 26, 2008, the Stark County Grand Jury indicted appellant, Ronald Lee, on one count of domestic violence in violation of R.C. 2919.25. Said charge arose from an incident involving appellant and his disabled blind sister.

{¶2} On January 12, 2009, appellant pled guilty to the charge. On February 9, 2009, appellant filed a motion to withdraw his guilty plea. A hearing was held on March 16, 2009. By judgment entry filed April 6, 2009, the trial court denied the motion. By judgment entry filed April 14, 2009, the trial court sentenced appellant to three years of community control.

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

I

{¶4} "THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING APPELLANT'S MOTION TO WITHDRAW HIS PLEA."

I

{¶5} Appellant claims the trial court erred in denying his request to withdraw his guilty plea prior to sentencing. We disagree.

{¶6} 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.

{¶7} "It is well established that, even though a defendant does not have an absolute right to withdraw a plea prior to sentencing, a presentence motion to withdraw a guilty plea should be 'freely and liberally granted.'***Although such a motion is to be treated liberally, the trial court's decision is still ultimately one of discretion. In determining whether the trial court has properly exercised its discretion, this court is aided by the following factors: (1) whether the accused was represented by highly competent counsel, (2) whether the accused was given a full Crim.R. 11 hearing before entering the plea, (3) whether a full hearing was held on the withdrawal motion, and (4) whether the trial court gave full and fair consideration to the motion.***In addition to these factors, there are other considerations, including (1) whether the motion was made within a reasonable time; (2) whether the motion set out specific reasons for the withdrawal; (3) whether the accused understood the nature of the charges and the possible penalties; and (4) whether the accused was perhaps not guilty or had a complete defense to the charges." *State v. McNeil* (2001), 146 Ohio App.3d 173, 175-176. (Footnotes omitted.)

{¶8} In his brief at 4, appellant argues his ramblings during the Crim.R. 32.1 hearing, coupled with the fact that the trial court referred appellant to the mental health track of probation "raises serious questions about Appellant's clarity of mind." Appellant also argues the trial court failed to give him full and fair consideration because it failed to follow up with his sister, the victim, on an unauthenticated letter she had purportedly

written "recanting the allegations against Appellant." Lastly, appellant argues he is innocent of the charge based upon the letter.

{¶9} During the sentencing hearing, appellant challenged the voluntariness of his plea. Appellant claimed he pled guilty only to get released from prison. In its judgment entry filed April 6, 2009, the trial court specifically found appellant's plea was voluntary and fulfilled the mandates of Crim.R 11:

{¶10} "In the present action the defendant seeks to withdraw his guilty plea on the basis that he is not guilty of the offense and because he was motivated to enter his plea by the Court's willingness to consider and grant him a community control sanction and release him from the Stark County Jail. The Court finds having reviewed the transcript of the plea, that in viewing the totality of the circumstances it is clearly demonstrated that the defendant's plea was knowingly, intelligently and voluntarily entered in compliance with Criminal Rule 11. Further, the defendant did not have ineffective assistance of counsel and the defendant was afforded a full and fair hearing. This Court finds that the evidence presented at the hearing regarding the victim not wanting to pursue the case against the defendant was not credible."

{¶11} A transcript of appellant's plea has not been provided for our review. In *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199, the Supreme Court of Ohio held the following:

{¶12} "The duty to provide a transcript for appellate review falls upon the appellant. This is necessarily so because an appellant bears the burden of showing error by reference to matters in the record. See *State v. Skaggs* (1978), 53 Ohio St.2d 162. This principle is recognized in App.R. 9(B), which provides, in part, that "****the

appellant shall in writing order from the reporter a complete transcript or a transcript of such parts of the proceedings not already on file as he deems necessary for inclusion in the record.***.' When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court's proceedings, and affirm." (Footnote omitted.)

{¶13} After appellant pled guilty, the trial court found the following in its change of plea judgment entry filed January 22, 2009:

{¶14} "Whereupon the Court having granted leave, the defendant withdrew his plea of not guilty and thereupon the court inquired of the defendant as to whether or not he desired to plead further, to which inquiry the defendant replied that he is guilty of the crime of Domestic Violence, 1 ct. [R.C. 2919.25(A)] (F4) as charged in the Indictment, which said plea was accepted by the Court."

{¶15} We presume the validity of the plea hearing and the trial court's finding and find appellant's plea was voluntary.

{¶16} As to appellant's "clarity of mind," the record indicates the issue was never brought up prior to the taking of the plea. A motion on appellant's competency was never filed. We have reviewed the transcript of the hearing on the motion to withdraw and find no indication that appellant lacked "clarity of mind." It is very clear from appellant's statements during the hearing that he believed he was being maliciously prosecuted because of a prior complaint he had filed against "a judge in this county." March 16, 2009 T. at 8. Appellant stated "a good old boy system***has been working" during the pretrial stage. Id. at 9.

{¶17} Appellant's main argument is that both his sister's guardian and his sister want the charges dropped. Id at 4. Somehow, appellant converts this to a claim of innocence. The trial court noted that the circumstances of the request to drop the charges were suspect because of their timing (after appellant's release from jail). Id. at 12-13. The trial court asked the prosecutor to contact appellant's sister for further investigation. Id. at 12. There is no indication in the record that the trial court received any further information from the prosecutor.

{¶18} During the motion hearing, appellant tacitly admitted to being upset with his sister, arguing with her, and hurting her feelings. Id. at 9-10. Appellant argued to the trial court that his sister recanted, when in fact his sister asked for the domestic violence charge to be dropped. As noted by the trial court, the state was now the complaining witness not the victim, and through subpoena powers, could require the sister's testimony. Id. at 12.

{¶19} Upon review, we find the trial court did not abuse its discretion in denying appellant's Crim.R. 32.1 motion to withdraw his guilty plea.

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

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

By Farmer, P.J.

Gwin, J. and

Edwards, J. concur.

s/ Sheila G. Farmer

s/ W. Scott Gwin

s/ Julie A. Edwards

JUDGES

SGF/sg 929

