[Cite as *State v. Cochran*, 2009-Ohio-5977.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	
	:	Hon. William B. Hoffman, P.J.
Plaintiff-Appellee	:	Hon. John W. Wise, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 09CA0088
JEREMY L. COCHRAN	:	
	:	
	:	
Defendant-Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Licking County Court of Common Pleas Case No. 2003CR00176
JUDGMENT:	AFFIRMED
DATE OF JUDGMENT ENTRY:	November 10, 2009

APPEARANCES:

For Plaintiff-Appellee:

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LICKING COUNTY PROSECUTOR

TRACY F. VAN WINKLE
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For Defendant-Appellant:

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Delaney, J.

{¶1} Appellant Jeremy L. Cochran appeals the June 23, 2009 judgment entry of the Licking County Court of Common Pleas denying his motion to withdraw guilty plea.

{¶2} On April 24, 2003, Cochran was indicted by the Licking County Grand Jury on multiple counts of burglary, unauthorized use of property, safecracking with a firearms specification, forgery, and engaging in a pattern of corrupt activity. On August 28, 2003, Cochran entered a plea of guilty to all the charges and the State dismissed the firearms specification. At the change of plea and sentencing hearing, evidence was presented that between September 15, 2002 and March 21, 2003, Cochran engaged in a felony crime spree with a variety of accomplices in Licking County, as well as in other counties in Ohio and several other states.

{¶3} The trial court sentenced Cochran to two years in prison on each burglary count, to be served consecutively with each other. Cochran was further sentenced to six months in prison on the unauthorized use of property charge, one year on the charge of safecracking, and two years in prison on the charge of engaging in a pattern of corrupt activity. Finally, the trial court sentenced Cochran to six months in prison on each count of forgery, to be served consecutively. Thus, Cochran received a total ten year prison sentence.

{¶4} On June 1, 2009, Cochran filed a motion to withdraw his guilty plea as to only one count: Count Twelve, engaging in a pattern of corrupt activity. The trial court denied Cochran's motion by judgment entry on June 23, 2009. It is from this decision Cochran now appeals.

ASSIGNMENTS OF ERROR

{¶5} Cochran raises three Assignments of Error:

{¶6} "I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DENYING APPELLANT'S MOTION TO WITHDRAW HIS GUILTY PLEA ON COUNT TWELVE, ENGAGING IN A PATTERN OF CORRUPT ACTIVITY.

{¶7} "II. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DENYING APPELLANT AN EVIDENTIARY HEARING.

{¶8} "III. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN FAILING TO APPOINT COUNSEL TO APPELLANT ON HIS MOTION TO WITHDRAW GUILTY PLEA."

APP.R. 11.1

{¶9} This case comes to us on the accelerated calendar. App. R. 11.1, which governs accelerated calendar cases, provides, in pertinent part:

{¶10} "(E) Determination and judgment on appeal. The appeal will be determined as provided by App. R. 11.1. It shall be sufficient compliance with App. R. 12(A) for the statement of the reason for the court's decision as to each error to be in brief and conclusory form. The decision may be by judgment entry in which case it will not be published in any form."

{¶11} One of the important purposes of accelerated calendar is to enable an appellate court to render a brief and conclusory decision more quickly than in a case on the regular calendar where the briefs, facts and legal issues are more complicated. *Crawford v. Eastland Shopping Mall Assn.* (1983), 11 Ohio App.3d 158.

{¶12} This appeal shall be considered in accordance with the aforementioned rules.

I., II.

{¶13} Because Cochran's first and second assignments of error are interrelated, we will consider them together. Cochran argues the trial court erred in denying his motion to withdraw his guilty plea to engaging in a pattern of corrupt activity and not holding an evidentiary hearing on said motion. We disagree.

{¶14} Crim.R. 32.1 governs withdrawals of guilty pleas, and it reads, "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." Our standard of review on a motion to withdraw a guilty plea is limited to an abuse of discretion. *State v. Smith* (1977), 49 Ohio St.2d 261, 361 N.E.2d 1324. In order to find an abuse of discretion, we must determine the trial court's order was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 450 N.E.2d 1140.

{¶15} Cochran moved the trial court to withdraw his plea of guilty to the charge of engaging in a pattern of corrupt activity, in violation of R.C. 2923.32(A)(1). R.C. 2923.32(A)(1) states as follows: "No person employed by, or associated with, any enterprise shall conduct or participate in, directly or indirectly, the affairs of the enterprise through a pattern of corrupt activity or the collection of an unlawful debt."

{¶16} Cochran argues that he could not be indicted or convicted of the offense because his individual criminal activities did not meet the definition of "enterprise." He

states that in order to for him to be found guilty of the offense, other individuals were required to be similarly indicted to meet the definition of an "enterprise." Because his conviction was improper, he argues his sentence is void and his motion should be considered a pre-sentence motion to withdraw his guilty plea.

{¶17} R.C. 2923.31(C) defines "enterprise" to include "any individual, sole proprietorship, partnership, limited partnership, corporation, trust, union, government agency, or other legal entity, or any organization, association, or group of persons associated in fact although not a legal entity. 'Enterprise' includes illicit as well as licit enterprises." This Court previously examined the offense of engaging in a pattern of corrupt activity in *State v. Scott*, Morgan App. No. 06 CA 1, 2007-Ohio-303. In that case we held: "'The General Assembly has determined that if a defendant has engaged in two or more acts constituting a predicate offense, he or she is engaging in a pattern of corrupt activity and may be found guilty of a RICO violation.' *State v. Schlosser* (1997), 79 Ohio St.3d 329, 335, 681 N.E.2d 911. (Emphasis omitted.) In order to establish the existence of an 'enterprise' under Ohio's RICO Act, there must be some evidence of: (1) an ongoing organization, formal or informal; (2) with associates that function as a continuing unit; and (3) with a structure separate and apart, or distinct, from the pattern of corrupt activity. *State v. Teasley,* Franklin App. Nos. 00AP-1322, 00AP-1323, 2002-Ohio-2333, ¶ 53, citing *State v. Warren* (1992), Franklin App. No. 92AP-603, and *United States v. Turkette* (1981), 452 U.S. 576, 583, 101 S.Ct. 2524, 69 L.Ed.2d 246." Id. at ¶45.

{¶18} R.C. 2923.31(C) defines "enterprise" to include any individual, as well as a group of associated persons. There is no requirement in the statute that others involved

in the corrupt activity also be indicted as an element of the offense. This Court previously stated in *State v. Campbell,* Delaware App. No. 07-CA-A-08-0041, 2008-Ohio-2143, ¶27: "It is the grand jury's statement of the existence of the conspiracy agreement rather than the identity of those who agree which places the defendant on notice of the charge he must be prepared to meet'", citing *United States v. Piccolo*, 723 F.2d 1234, 1238-39 (6th Cir. 1983), *cert. denied*, 466 U.S. 970, 104 S.Ct. 2342, 80 L.Ed.2d 817 (1984).

{¶19} We find the trial court did not abuse its discretion in rejecting Cochran's motion as there is no indication a manifest injustice was presented.

{¶20} We further find the trial court did not abuse its discretion in denying Cochran's request for an evidentiary hearing. A hearing on a post-sentence motion to withdraw a guilty plea "is not required if the facts as alleged by the defendant, and accepted as true by the court, would not require that the guilty plea be withdrawn." *State v. Blatnik* (1984), 17 Ohio App.3d 201, 204, 17 OBR 391, 395, 478 N.E.2d 1016, 1020.

{¶21} Accordingly, the first and second assignments of error are overruled.

III.

{¶22} Cochran argues in his third assignment of error that the trial court committed reversible error by failing to appoint him legal counsel on his motion to withdraw his plea of guilty. We disagree.

{¶23} In a similar case, the Eighth District Court of Appeals held that a defendant was not entitled to appointed counsel for a post-sentence motion to withdraw a guilty plea, filed six years after his judgment of conviction. In *State v. McNeal*, Cuyahoga App. No. 83793, 2004-Ohio-50, appeal not accepted for review by 102 Ohio

St.3d 1483, a criminal defendant requested appointed counsel to assist with his motion to withdraw his guilty plea, filed six years after his judgment of conviction. The Eight District held that a trial judge acts within her discretion when denying appointed counsel where the Crim.R. 32.1 motion is filed "long after the expiration" of an initial appeal of right. It reasoned,

{¶24} "There is no statutory right to counsel in Crim.R. 32.1 motions, so [the defendant-appellant's] claim must arise, if at all, from the Ohio or United States Constitutions. Even though the Ohio Supreme Court recently clarified that Crim.R. 32.1 motions are part of the original criminal action and are not collateral proceedings, this fact alone does not mean that a defendant is entitled to counsel at State expense when filing a motion to withdraw a guilty plea nearly six years after conviction [*State v. Bush*, 96 Ohio St.3d 235, 2002-Ohio-3993].

{¶25} "The United States Supreme Court has stated that the federal constitutional right to counsel extends only through trial and 'the first appeal of right.' Ohio courts have not granted greater rights than those in the federal constitution, and have generally held that there is no absolute right to appointed counsel in pursuing a postsentence motion to withdraw a guilty plea. However, some cases have suggested that counsel may be necessary if the judge determines that an evidentiary hearing is required, and a judge who schedules an evidentiary hearing is at least required to notify the county public defender's office and allow it to decide whether to represent the defendant under R.C. 120.16(D). Moreover, the judge retains the discretion to appoint counsel even if not constitutionally required." Id., ¶ 6-8.

{¶26} In the present case, Cochran filed his post-sentence motion to withdraw his guilty plea six years after his conviction. While Cochran argues that the trial court should have considered his motion to withdraw his guilty plea as a pre-sentence motion, we find that argument to be not well taken based upon our disposition of the first assignment of error. The trial court did not abuse its discretion in not appointing counsel to Cochran to assist with his post-sentence motion to withdraw his guilty plea.

{¶27} The third assignment of error is overruled.

{¶28} The judgment of the Licking County Court of Common Pleas is affirmed.

By: Delaney, J.

Hoffman, P.J. and

Wise, J. concur.

HON. PATRICIA A. DELANEY

HON. WILLIAM B. HOFFMAN

HON. JOHN W. WISE

PAD:kgb

[Cite as *State v. Cochran*, 2009-Ohio-5977.]

IN THE COURT OF APPEALS FOR LICKING COUNTY, OHIO

FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
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Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
JEREMY L. COCHRAN	:	
	:	
	:	Case No. 09CA0088
Defendant-Appellant	:	

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Licking County Court of Common Pleas is affirmed. Costs assessed to Appellant.

HON. PATRICIA A. DELANEY

HON. WILLIAM B. HOFFMAN

HON. JOHN W. WISE