

[Cite as *State v. Goodwin* , 2010-Ohio-3589.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

RONALD J. GOODWIN

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. Patricia A. Delaney, J.

Case No. 2009CA00231;
2009CA00265

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of
Common Pleas, Case No. 2004CR1220(A)

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

August 2, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Hoffman, P.J.

{¶1} Defendant-appellant Ronald J. Goodwin appeals the judgment of the Stark County Court of Common Pleas denying his motion to withdraw plea. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On August 20, 2004, Appellant was indicted on three counts of aggravated robbery, with attendant firearm specifications, and three counts of burglary. On November 1, 2004, Appellant entered a plea of guilty to the charges and specifications. The trial court accepted the plea, and sentenced Appellant to twelve years, nine of which were imposed for the three consecutive gun specifications.

{¶3} Prior to taking the plea, the trial court engaged in a colloquy with Appellant informing him he would be eligible for judicial release after serving the mandatory nine year portion of his sentence and six months of the remainder. Appellant later learned he would not be eligible for judicial release at all because his sentence was greater than ten years, pursuant to R.C. 2929.20(A).

{¶4} On February 9, 2005, Appellant filed a motion to mitigate sentence requesting the trial court modify the sentence imposed. Specifically, Appellant requested the trial court order the three year gun specifications run concurrently, rather than consecutively, so the total sentence imposed would be six years. Appellant's motion states,

{¶5} "It appears that the court would consider judicial release at the appropriate time, however, as sentenced under the state of the judicial release statute, sentences which exceed 10 years render a defendant ineligible to file for judicial release."

{¶16} The trial court overruled the motion stating the gun specifications were required by law to be served consecutively. Appellant did not appeal the trial court's judgment.

{¶17} On February 19, 2009, Appellant moved the trial court to withdraw his plea. Via Judgment Entry of August 4, 2009, the trial court denied the motion.

{¶18} Appellant now appeals, assigning as error:

{¶19} "I. THE TRIAL COURT ERRED BY DENYING APPELLANT'S MOTION TO WITHDRAW HIS PLEA WHEN HE WAS INCORRECTLY ADVISED, DURING HIS PLEA COLLOQUY, THAT HE WOULD BE ELIGIBLE FOR JUDICIAL RELEASE."

{¶10} Ohio Criminal Rule 32.1 provides that after sentencing has occurred, a defendant may be permitted to withdraw his plea to correct a manifest injustice. It has been expressly recognized by the weight of authority that a defendant seeking to withdraw a plea of guilty after sentence has the burden of establishing the existence of manifest injustice. *State v. Smith* (1977), 49 Ohio St.2d 261, citing *United States v. Mainer* (C.A. 3, 1967), 383 F.2d 444. The motion is addressed to the sound discretion of the trial court, and the good faith, credibility and weight of the movant's assertions in support of the motion are matters to be resolved by that court. *Id.*, citing *United States v. Washington* (C.A. 3, 1965), 341 F.2d 277, certiorari denied 382 U.S. 850, 86 S.Ct. 96, 15 L.Ed.2d 89 rehearing denied 382 U.S. 933, 86 S.Ct. 317, 15 L.Ed.2d 346.

{¶11} Although the rule itself does not provide for a time limit after the imposition of sentence during which a motion to withdraw a plea of guilty must be made, it has been held that an undue delay between the occurrence of the alleged cause for withdrawal and the filing of the motion is a factor adversely affecting the credibility of the

movant and militating against the granting of the motion. *Id.*, citing *Oksanen v. United States* (C.A. 8, 1966), 362 F.2d 74. See also, *State v. Simmons* (8th Dist.), 2009-Ohio-2028; *State v. Never* (6th Dist.), 2009-Ohio-1473.

{¶12} Here, the trial court's judgment entry states,

{¶13} "However, after a review of the transcript and current case law, the Court finds that the Defendant has not demonstrated a Manifest Injustice created by his guilty plea. The Court has also taken into consideration the delay in the withdraw of the guilty plea and into [sic] effect the Defendant's other subsequent motions.

{¶14} "Furthermore, the Defendant was never promised judicial release after any period of time."

{¶15} While we find the incorrect statement by the trial court as to his eligibility for judicial release would have rendered Appellant's plea unintelligent and therefore involuntary, Appellant did not timely take a direct appeal from his original sentence.¹

{¶16} The record sub judice demonstrates Appellant was aware as early as February 9, 2005, he would not be eligible for judicial release due to the length of his sentence. Appellant moved the trial court to modify his sentence which the trial court denied. Again, Appellant did not appeal that entry. We find the trial court did not abuse its discretion in denying Appellant's motion due to undue delay from both the time of initial sentencing and the denial of Appellant's prior motions.

¹ We do not find the fact judicial release was never promised as the determinative issue.

{¶17} Appellant's sole assignment of error is overruled, and the judgment of the Stark County Court of Common Pleas is affirmed.

By: Hoffman, P.J.

Farmer, J. and

Delaney, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY

