

COURT OF APPEALS
HOLMES COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff - Appellee

-vs-

JESSE JAMES BAKER

Defendant - Appellant

JUDGES:

Hon. W. Scott Gwin, P.J.
Hon. John W. Wise, J.
Hon. Craig R. Baldwin, J.

Case No. 14CA007

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Holmes County
Court of Common Pleas, Case No.
10CR103, 11CR002

JUDGMENT:

Affirmed

DATE OF JUDGMENT:

December 23, 2014

APPEARANCES:

For Plaintiff-Appellee

STEVE KNOWLING
Prosecuting Attorney

By: SEAN M. WARNER
Assistant Prosecuting Attorney
164 E. Jackson Street
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For Defendant-Appellant

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Baldwin, J.

{¶1} Appellant Jesse James Baker appeals a judgment of the Holmes County Common Pleas Court overruling his motion to withdraw his guilty plea. Appellee is the State of Ohio.

STATEMENT OF FACTS AND CASE

{¶2} On October 22, 2010, drug enforcement agents executed a search warrant for a camper, garage, and house on Township Road 212 in Washington Township, Holmes County. Based on evidence seized during the search and on the corresponding investigation, the Holmes County Grand Jury indicted appellant and a co-defendant in Case No. 10CR103 on November 23, 2010, on the following charges:

{¶3} Count I: Illegal Manufacture of Methamphetamine, in violation of R.C. 2925.04, a second degree felony;

{¶4} Count II: Illegal Assembly or Possession of Chemicals/Methamphetamine, in violation of R.C. 2925.041, a third degree felony;

{¶5} Count III: Aggravated Trafficking in Methamphetamine, in violation of R.C. 2925.03, a third degree felony;

{¶6} Count IV: Possession of Methamphetamine, in violation of R.C. 2925.11, a third degree felony;

{¶7} Count V: Possession of Heroin, in violation of R.C. 2925.11, a fifth degree felony;

{¶8} Count VI: Possession of Drug Paraphernalia, in violation of R.C. 2925.14, a fourth degree misdemeanor;

{¶9} Count VII: Weapons Under Disability, in violation of R.C. 2923.13, a third degree felony.

{¶10} The indictment also contained a forfeiture specification and a firearm specification.

{¶11} On January 11, 2011, appellant was also indicted in Case No. 11CR002. This indictment contained one count of Illegal Manufacture of Methamphetamine, F-2, in violation of R.C. 2925.04, one count of Illegal Assembly, F-3, in violation of R.C. 2925.041, and one firearm specification assigned to both counts. The only difference between these counts and the first two counts in Case No. 10CR103 was concerning the dates of offense.

{¶12} On January 6, 2011, a pre-trial hearing was held. At this time the two cases were ordered joined for trial via a judgment entry dated January 14, 2011.

{¶13} On January 26, 2011, upon motion by the State, the trial court amended Counts III and IV in Case No. 10CR103 from Felony-3 to Felony-4 offenses.

{¶14} On February 17, 2011, appellant entered guilty pleas to Counts II, V, and VII of the original indictment described above. In addition, appellant pled guilty to the firearm specification, which carried a one-year mandatory prison sentence. Appellant further consented and stipulated to the property forfeiture specification contained in the indictment. The remaining counts in Case No. 10CR103, as well as the indictment in Case No. 11CR002 were dismissed.

{¶15} After his plea, the trial judge granted appellant an "O.R." bond with certain reporting conditions. Subsequently, a bench warrant was issued due to appellant's failure to comply with the reporting requirements of this bond.

{¶16} Appellant failed to appear at his March sentencing date. Appellant was eventually located in the State of Illinois and arrested. He appeared for sentencing in Holmes County on August 2, 2011.

{¶17} Prior to sentence being imposed, appellant moved to withdraw his guilty plea. The trial court, after conducting a hearing, denied the motion. The trial court then proceeded to sentence appellant. The original sentencing judgment entry was filed on August 3, 2011, followed by a nunc pro tunc sentencing entry on August 30, 2011, to correct the numbering of the counts to which appellant pled guilty.

{¶18} Appellant filed a notice of appeal to this Court. He challenged, inter alia, the trial court's denial of his motion to withdraw his guilty pleas. We concluded the trial court had abused its discretion in denying appellant's motion to withdraw his guilty pleas, and we vacated his convictions and sentences, finding his remaining assigned errors moot. The case was then remanded for further proceedings. See *State v. Baker*, 5th Dist. Holmes No. 11 CA 16, 2012–Ohio–853.

{¶19} Upon remand, appellant filed a number of pro se motions. After obtaining new counsel, who obtained leave to consolidate the pro se motions, the trial court conducted a pre-trial hearing on September 6, 2012, following which the consolidated motions, including all motions to suppress, were overruled.

{¶20} On September 10, 2012, prior to the commencement of a jury trial, appellant and the State reached a plea deal. Pursuant to the plea agreement, appellant was to plead guilty to five counts: Illegal manufacture of methamphetamine in violation of R.C. 2925.04; illegal assembly or possession of chemicals for methamphetamine, with a firearm specification, in violation of R.C. 2925.041; possession of

methamphetamine in violation of R.C. 2925.11; possession of heroin in violation of R.C. 2925.11; and, having a weapon under a disability in violation of R.C. 2923.13. See Tr., September 10, 2012, at 2–3. In exchange, the balance of the charges would be dismissed. The State further agreed to a “recommendation of five years, of which: counts eight and count two have a total mandatory of three and one years, four year mandatory.” Tr. at 3. The State further agreed to “waive any fine and costs, on either of these two cases.” Tr. at 3.

{¶21} Appellant filed a notice of appeal to this Court, challenging among other things the court’s failure to waive fines and costs in accordance with the plea agreement. We reversed the court’s judgment concerning fines and costs. *State v. Baker*, 5th Dist. Holmes No. 12CA17, 2013-Ohio-3504. The trial court issued a nunc pro tunc sentencing entry on August 28, 2013, waiving court costs and fines.

{¶22} On August 22, 2014, appellant filed a pro se motion to withdraw his guilty plea, arguing that the court broke the plea agreement by assessing court costs to appellant. The trial court overruled the motion on August 27, 2014. Appellant filed a notice of appeal, assigning a single error:

{¶23} “THE APPELLANT DOES CLAIM INEFFECTIVE ASSISTANCE OF BOTH TRIAL AND APPELLATE COUNSEL.”

{¶24} Appellant argues that counsel was ineffective for failing to follow up on the court order requiring fines and costs to be waived in his failure to appear conviction in 2012. He argues that in exchange for dismissing his appeal in Case No. 12CA004, the State agreed to waive fines and court costs.

{¶25} Appellant's argument is directed to his conviction for failure to appear, which is a separate case in both the trial court and this Court from the instant case. Appellant's arguments are therefore not properly before the Court in the instant case. Appellant assigns no error to the judgment appealed from in the instant case overruling his motion to withdraw his guilty plea.

{¶26} The assignment of error is overruled. The judgment of the Holmes County Common Pleas Court is affirmed. Costs are assessed to appellant.

By: Baldwin, J.

Gwin, P.J. and

Wise, J. concur.