

COURT OF APPEALS  
STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff - Appellee	:	Hon. John W. Wise, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	
PAUL EDWARD BUNTING	:	Case No. 2015CA00093
	:	
Defendant - Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING:	Appeal from the Stark County Court of Common Pleas, Case No. 2000CR638A
--------------------------	---

JUDGMENT:	Affirmed
-----------	----------

DATE OF JUDGMENT:	February 1, 2016
-------------------	------------------

APPEARANCES:

For Plaintiff-Appellee

JOHN D. FERRERO  
Prosecuting Attorney

By: RONALD MARK CALDWELL  
Assistant Prosecuting Attorney  
110 Central Plaza South, Suite 510  
Canton, Ohio 44702

For Defendant-Appellant

PAUL EDWARD BUNTING, pro se  
Inmate No. 395-279  
Belmont Correctional Institution  
P.O. Box 540  
St. Clairsville, Ohio 43950

*Baldwin, J.*

{¶1} Appellant Paul Edward Bunting appeals a judgment of the Stark County Common Pleas Court overruling his motion to withdraw his plea of no contest. Appellee is the State of Ohio.

### STATEMENT OF FACTS AND CASE

{¶2} On June 2, 2000, the Stark County Grand Jury indicted appellant on one count of rape in violation of R.C. 2907.02 and six counts of sexual battery in violation of R.C. 2907.03. The charges arose from incidents involving appellant's stepdaughter. Appellant filed a motion to suppress incriminating statements he made to law enforcement officers, which the trial court granted in part and denied in part. On August 4, 2000, appellant pled no contest to the charges. The trial court found appellant guilty and sentenced him to a total aggregate term of eighteen years in prison. He was also classified as a sexually oriented offender. Appellant appealed, challenging the trial court's decision on the suppression motion. This court affirmed appellant's conviction and sentence. *State v. Bunting*, 5th Dist. Stark No. 2000CA00286, 2001 WL 698368 (May 29, 2001).

{¶3} On August 27, 2001, appellant filed an application to reopen his appeal, claiming his appellate counsel was deficient. This court granted the application, reopened appellant's case, and denied appellant's claims. *State v. Bunting*, Stark App. No.2000CA00286, 2002-Ohio-3594. Thereafter, appellant filed numerous motions, including a motion to reconsider, an application to adduce newly discovered evidence, petitions for postconviction relief, a motion for appointment of counsel and a motion to dismiss. All these motions were denied by either the trial court or this Court.

{¶4} On September 29, 2006, appellant filed another petition for postconviction relief, claiming he was entitled to resentencing pursuant to *U.S. v. Booker* (2005), 543 U.S. 220, *Blakely v. Washington* (2004), 542 U.S. 296, and *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856. The trial court denied the petition, and this Court affirmed. *State v. Bunting*, 5th Dist. Stark No. 2006CA00330, 2007-Ohio-2184.

{¶5} Appellant subsequently filed numerous motions for judicial release, all of which were overruled by the trial court. On March 27, 2015, appellant filed a motion to withdraw his no contest plea, arguing that at the time he entered his plea, the trial court failed to advise him of the consequences of an unsuccessful judicial release application. The trial court overruled the motion, and appellant assigns a single error:

{¶6} “TRIAL COURT JUDGE PREJUDICIALLY ABUSED DISCRETION IN REFUSING TO PERMIT [DEFENDANT] APPELLANT TO WITHDRAW PLEA OF NO CONTEST WHEN MANIFEST INJUSTICE OCCURRED IN THE DENIAL TO GRANT MOTION FOR JUDICIAL RELEASE ELIGIBILITY IS NEXUS IN THE COURT’S FAILURE TO HOLD A WITHDRAW OF PLEA HEARING.”

{¶7} Appellant argues that the court erred in overruling his no contest plea because in 2000, when he entered his plea, the court failed to advise him of the consequences of an unsuccessful application for judicial release. He argues the court failed to follow Crim. R. 11(C)(2)(a) in accepting his plea.

{¶8} Crim. 32.1 provides:

{¶9} “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.”

{¶10} A motion made pursuant to Crim.R. 32.1 is addressed to the sound discretion of the trial court. *State v. Smith*, 49 Ohio St.2d 261, 361 N.E.2d 1324 (1977).

{¶11} Crim. R. 11(C)(2)(a) sets forth what a trial court must address with a defendant entering a plea of guilty or no contest in a felony case:

In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and shall not accept a plea of guilty or no contest without first addressing the defendant personally and doing all of the following:

(a) Determining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.

{¶12} Appellant argues that the requirement that the court advise him of eligibility for probation or community control encompasses judicial release. Regarding the duty of a trial court to inform a defendant of the consequences of his plea regarding judicial release, this Court has stated:

Judicial release, as with the former early release through parole, “is distinct from sentencing because it operates to reduce a prison term the court has imposed.” *State v. White*, 2nd Dist. No. 04CA120, 2005-Ohio-5906, at ¶ 22. Thus, it is not the sort of “effect of the plea” of which a defendant must be informed before entering a plea. As the

Ohio Supreme Court has recognized, “a defendant who bases a plea decision on parole eligibility will often be relying on a factor beyond the prediction of defense counsel, and beyond the actual control of a defendant.” *State v. Xie* (1992), 62 Ohio St.3d 521, 524-525, 584 N.E.2d 715. See, *State v. Mitchell*, 11th Dist. No.2004-T-0139, 2006-Ohio-618 at ¶ 14.

{¶13} *State v. Smith*, 5th Dist. Muskingum No. CT2007-0073, 2008-Ohio-3306, ¶ 17.

{¶14} Appellant’s signed change of plea form does not reflect that judicial release was a consideration in the plea agreement, nor does the transcript of the change of plea hearing demonstrate that the possibility of judicial release was a motivating factor in his change of plea from not guilty to no contest. The court therefore was not required to notify appellant of his eligibility for judicial release, and he has not demonstrated manifest injustice.

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

By: Baldwin, J.

Gwin, P.J. and

Wise, J. concur.