

COURT OF APPEALS  
STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

|                       |   |                                |
|-----------------------|---|--------------------------------|
| STATE OF OHIO         | : | JUDGES:                        |
|                       | : | Hon. Patricia A. Delaney, P.J. |
| Plaintiff - Appellee  | : | Hon. William B. Hoffman, J.    |
|                       | : | Hon. Craig R. Baldwin, J.      |
| -vs-                  | : |                                |
|                       | : |                                |
| CORVAWN MOORE         | : | Case No. 2016CA00211           |
|                       | : |                                |
| Defendant - Appellant | : | <u>O P I N I O N</u>           |

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| CHARACTER OF PROCEEDING: | Appeal from the Stark County Court<br>of Common Pleas, Case No.<br>2013CR1451 |
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| JUDGMENT: | Affirmed |
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| DATE OF JUDGMENT: | February 6, 2017 |
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APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

JOHN D. FERRERO  
Prosecuting Attorney

CORVAWN MOORE, pro se  
Inmate A650-970  
Marion Correctional Institution  
P.O. Box 57  
Marion, Ohio 43301

By: KRISTINE W. BEARD  
Assistant Prosecuting Attorney  
110 Central Plaza South, Suite 510  
Canton, Ohio 44702

*Baldwin, J.*

{¶1} Appellant Corvawn Moore appeals a judgment of the Stark County Common Pleas Court overruling his motion to withdraw his guilty plea. Appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} Appellant was charged by indictment with one count of aggravated robbery and one count of felonious assault. Both counts carried firearm specifications. On December 10, 2013, appellant entered pleas of guilty to the charges. The trial court merged the firearms specifications for sentencing and sentenced appellant to an aggregate prison term of 10 years. Appellant did not appeal from his convictions and sentences.

{¶3} On July 9, 2015, Appellant filed a “Motion for Sentencing; Motion for Issuance of a Final Appealable Order; Motion for ‘Allied Offense Determination’”, which the trial court overruled on July 17, 2015. Appellant appealed the July 17, 2015 Judgment Entry, which this Court affirmed in *State v. Moore*, 5th Dist. Stark App. No.2015CA00137, 2016–Ohio–1339.

{¶4} On April 14, 2016, appellant filed a pro se motion to withdraw his guilty plea, alleging that counsel failed to notify him of a plea agreement in which the state offered him an aggregate term of five years. The state filed a response in opposition on April 15, 2015, arguing that appellant’s claims were barred by the doctrine of res judicata, and appellant failed to establish a manifest injustice. Via Judgment Entry filed April 20, 2016, the trial court overruled Appellant’s motion for the reasons set forth in the state’s response. Appellant filed a Notice of Appeal from the April 20, 2016 Judgment Entry on May 9, 2016. We affirmed the judgment of the trial court, finding that appellant’s motion

to withdraw his guilty plea was a motion for postconviction relief. We held that appellant had failed to file a transcript of the plea hearing, which might have demonstrated that he had in fact been informed of the plea bargain. *State v. Moore*, 5th Dist. Stark No. 2016CA00094, 2016-Ohio-7380, ¶18. We further held that appellant failed to file an affidavit that had the plea bargain been offered, he would have accepted it, and further failed to present evidence that the trial court would have accepted the plea bargain. *Id.* at ¶20-21.

{¶5} Appellant filed a second motion to withdraw his guilty plea on October 31, 2016, setting forth the same argument he previously presented to the trial court and to this Court. However, appellant attached an affidavit to this second motion stating that if he had been notified the of the plea deal, he would have accepted the negotiated plea agreement. The trial court overruled the motion, and appellant sets forth one assignment of error:

{¶6} “DUE PROCESS IS OFFENDED AND EQUAL PROTECTION IMPLICATED WHERE A CRIMINAL DEFENDANT, WHOM WAS KEPT COMPLETELY IGNORANT OF AN UNDERLYING CONTRACTUAL PLEA AGREEMENT FOR (5) FIVE YEARS BETWEEN DEFENSE COUNSEL(S) AND STATE PROSECUTORS WAS UNKNOWINGLY SENTENCED TO A (7) SEVEN YEAR PRISON TERM WHICH DEFENSE COUNSEL AND STATE PROSECUTORS STOOD IDLY BY AND REMAINED SILENT.”

{¶7} Appellant has raised the same issue in this appeal as in his prior appeal. His instant motion to withdraw his guilty plea differs from his prior motion only in that he

attached an affidavit to the second motion stating that had the plea bargain been offered, he would have accepted the deal.

{¶8} However, like the earlier appeal, appellant has not provided this Court with a transcript of the change of plea hearing, which may have revealed that the plea offer was, in fact, communicated to appellant. 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. *Knapp v. Edwards Lab.*, 61 Ohio St.2d 197, 400 N.E.2d 384 (1980).

{¶9} Further, as in the earlier appeal, appellant has failed to present evidence that the trial court would have accepted the plea deal. A trial court enjoys wide discretion in deciding whether to accept or reject a negotiated plea agreement. *Santobello v. New York*, 404 U.S. 257, 262, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971); *Akron v. Ragsdale*, 61 Ohio App.2d 107, 109–10, 399 N.E.2d 119 (9th Dist.1978). A defendant has no absolute right to have a guilty plea accepted. *Santobello* at 262, 92 S.Ct. 495, 30 L.Ed.2d 427; *Lafler v. Cooper*, 132 S.Ct. 1376, 1395, 182 L.Ed.2d 398 (2012).

{¶10} Finally, res judicata applies to bar claims raised in successive postconviction relief petitions or in motions to withdraw a guilty plea that could have been raised in the first postconviction relief petition or motion to withdraw a guilty plea. *State v. Gallegos-Martinez*, 5th Dist. Delaware No. 10-CAA-06-0043, 2010-Ohio-6463, ¶12. Appellant has raised the same issue in both motions to withdraw his pleas of guilty, and the issue is therefore barred by res judicata.

{¶11} 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.

Delaney, P.J. and

Hoffman, J. concur.