

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-03-1136

Appellee

Trial Court No. CR-2000-1588

v.

James Purley

DECISION AND JUDGMENT ENTRY

Appellant

Decided: July 30, 2004

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and Craig T. Pearson,
Assistant Prosecuting Attorney, for appellee.

Patricia Horner, for appellant.

* * * * *

HANDWORK, P. J.

{¶1} This is an appeal from a judgment of the Lucas County Court of Common Pleas which denied a motion to withdraw a guilty plea prior to sentencing filed by appellant, James Purley. For the reasons stated herein, this court affirms the judgment of the trial court.

{¶2} The facts underlying this appeal were fully set forth in appellant's prior appeal and will not be repeated. See, *State v. Purley*, 6th Dist. No. L-01-1005, 2002-Ohio-2689. Briefly, appellant, along with three other individuals, was indicted on aggravated robbery and kidnapping in connection with the August 15, 1998 robbery of a

restaurant in Toledo, Ohio. Gun specifications were attached to both charges. Appellant was convicted on all counts but this court reversed the conviction because of prosecutorial misconduct during closing argument.

{¶3} On August 29, 2002, on remand, appellant entered into a plea agreement and pled guilty to the two charges with the gun specifications deleted. At his scheduled sentencing hearing on May 1, 2003, appellant indicated his desire to withdraw his guilty plea. When appellant became disruptive and disrespectful to the court, the trial court continued the hearing until May 8, 2003. At that hearing, appellant argued that he was “being bullied into a plea” that he did not agree with and that his statement to the prosecutor was a “lie” and just what he had heard at his first trial. The trial court denied appellant’s motion and sentenced him. Appellant filed a timely notice of appeal and sets forth the following two assignments of error:

{¶4} “ASSIGNMENTS OF ERROR

{¶5} “I. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT OVERRULED DEFENDANT’S MOTION TO WITHDRAW HIS GUILTY PLEA.

{¶6} ”II. DEFENDANT’S PLEA WAS NOT VOLUNTARY.”

{¶7} In his first assignment of error, appellant argues that the trial court abused its discretion in denying his motion to withdraw his guilty plea. This court finds no merit in this assignment of error.

{¶8} Crim.R. 32.1 provides in relevant part: “[a] motion to withdraw a plea of guilty or no contest may be made only before sentence is imposed[.]” A presentence motion to withdraw a guilty plea should be freely and liberally granted; despite the more

lenient standard applicable to presentence motions; however, a defendant does not have an absolute right to withdraw such plea. *State v. Xie* (1992), 62 Ohio St.3d 521, paragraph 1 of the syllabus and 527. A decision to allow the withdrawal of a guilty plea before sentencing is within the sound discretion of the trial court. *Id.* at paragraph two of the syllabus. A reviewing court defers to the judgment of the trial court because "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.* at 525. The Ohio Supreme Court explained the import of the deference afforded to the trial court as follows:

{¶9} "Even though the general rule is that motions to withdraw guilty pleas before sentencing are to be freely allowed and treated with liberality, *** still the decision thereon is within the sound discretion of the trial court.*** Thus, unless it is shown that the trial court acted unjustly or unfairly, there is no abuse of discretion. *** One who enters a guilty plea has no right to withdraw it. It is within the sound discretion of the trial court to determine what circumstances justify granting such a motion.***" (Citations omitted.) *Id.* at 526.

{¶10} Appellate review is limited to a determination of whether the trial court's decision is unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *State v. Hollis* (1993), 91 Ohio App.3d 371, 373. Abuse of discretion is found in the rare instance when a decision is grossly violative of fact and logic so as to demonstrate perversity of will, defiance of judgment, undue passion or extreme bias. *State v. Lombardo, Jr.*, (Feb. 15, 1995), 9th Dist. No. 16368.

{¶11} A trial court does not abuse its discretion in overruling a motion to withdraw: (1) where the accused is represented by highly competent counsel, (2) where the accused was afforded a full hearing, pursuant to Crim.R. 11, before he entered the plea, (3) when, after the motion to withdraw is filed, the accused is given a complete and impartial hearing on the motion, and (4) where the record reveals that the court gave full and fair consideration to the plea withdrawal request. *Hollis*, supra at 373; *State v. Peterseim* (1980), 68 Ohio App.2d 211, 214. In addition to considering the circumstances surrounding the defendant's plea, the court also should examine the timing of the motion, the reasons given for the withdrawal, the defendant's understanding of the charges and penalties, and the existence of a meritorious defense. *State v. Fish* (1995), 104 Ohio App.3d 236, 240.

{¶12} After listening to appellant's reasons for wanting to withdraw his guilty plea and questioning him, the trial court denied appellant's motion to withdraw his guilty plea. The court stated that appellant had competent counsel and that all Crim.R. 11 rights had been complied with. The court also stated that appellant expressly understood the charges against him, the potential penalty and waived his right to a jury trial. In sentencing appellant, the trial court also noted that the concurrent sentences appellant received in the case sub judice would be run concurrent with those appellant received in another case in which appellant had gone to trial with the net effect that appellant would do no additional time as the result of the guilty plea in the case sub judice.

{¶13} After reviewing the entire record, we find no abuse of discretion by the trial court in denying appellant's motion to withdraw his guilty plea. The court fully and fairly

considered appellant's motion, conducting a full hearing on the matter. As the court found, appellant pled guilty to the charges at the plea hearing after having been fully informed of the nature of the charges, the consequences of the plea, and the rights he was waiving. Further, the record does not indicate that appellant was represented by incompetent counsel at the plea hearing. It appears that appellant had a "change of heart" shortly before he was to be sentenced. A mere change of heart is insufficient justification to withdraw a guilty plea. *State v. Drake* (1991), 73 Ohio App.3d 640, 645.

{¶14} Although appellant argues that he "felt forced into the plea by counsel," there is no evidence to support a finding that counsel coerced appellant into accepting the plea. Rather, it appears from the record that counsel secured a plea agreement wherein the state would recommend that appellant receive concurrent sentences and the firearm specification attached to each count was nolle thereby relieving appellant of the three years of actual incarceration on each specification.

{¶15} Under the circumstances in this case, we find the court's statements on the record reflect the court's full and fair consideration of appellant's motion. We also find that under the circumstances, the court did not abuse its discretion in denying appellant's motion to withdraw his guilty plea. Accordingly, appellant's first assignment of error is found not well-taken.

{¶16} In his second assignment of error, appellant argues that his plea was not voluntary. This court finds no merit in this assignment of error.

{¶17} Appellant signed a cooperation agreement with the state and a written plea agreement journalized on August 29, 2002, specifically acknowledging that he

understood the nature of the charges, the possible prison terms, that he was “satisfied with [his] attorney’s advice, counsel and competence,” that no threats had been made and that no promises had been made except as part of the plea agreement. The record leaves no doubt that appellant's claim that his plea was not voluntary, but was coerced, is not worthy of credence. In regard to this "coercion" argument, appellant has produced nothing to substantiate this claim but for his own self-serving statements. Said statements are insufficient to rebut the record that establishes appellant's plea was voluntary and made in compliance with Crim.R. 11. *State v. Kapper* (1983), 5 Ohio St.3d 36, 38-39; *State v. Collins* (May 24, 1999), 5th Dist. No. 98-CAC-02-011.

{¶18} Reviewing courts, in determining whether a guilty plea is voluntarily, intelligently and knowingly made, look to the totality of the circumstances. *State v. Nero* (1990), 56 Ohio St.3d 106, 108; *State v. Calvillo* (1991), 76 Ohio App.3d 714, 719. A trial court substantially complies with Crim.R. 11(C) where, under the totality of the circumstances, the defendant subjectively understands the rights he is waiving and the consequences of the plea. *Nero*, 56 Ohio St.3d at 108. As noted above, the trial court complied with Crim.R. 11. As also noted, appellant signed a written plea agreement in which he admitted the free and voluntary nature of his plea. Accordingly, appellant’s second assignment of error is found not well-taken.

{¶19} On consideration whereof, this court finds that the trial court did not err in denying the motion to withdraw a guilty plea and affirms the judgment of the Lucas County Court of Common Pleas. It is ordered that appellant pay court costs for this appeal.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See, also, 6th Dist.Loc.App.R. 4, amended 1/1/98.

Peter M. Handwork, P.J.

JUDGE

Richard W. Knepper, J.

JUDGE

Arlene Singer, J.
CONCUR.

JUDGE