

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

State of Ohio

Court of Appeals No. L-09-1228

Appellee

Trial Court No. CR1985-6576

v.

Ralph D. Warren

DECISION AND JUDGMENT

Appellant

Decided: May 21, 2010

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
David F. Cooper, Assistant Prosecuting Attorney, for appellee.

Ralph D. Warren, pro se.

* * * * *

OSOWIK, P.J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas which denied appellant's December 29, 2008 motion to withdraw a plea entered in 1986. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Ralph Warren, sets forth the following sole assignment of error:

{¶ 3} "General Assembly's enactment of s [sic] 258 § 1 in 1990 which altered the elements in R.C. 2925.13 (B) can be applied retroactively, thus making the appellant's 1986 guilty plea for Permitting Drug Abuse invalid."

{¶ 4} The following undisputed facts are relevant to the issues raised on appeal. On May 28, 1981, following jury trial, appellant was convicted of aggravated trafficking in cocaine. On January 22, 1986, appellant entered an *Alford* plea to permitting drug abuse, in violation of R.C. 2925.13(B). Under the law in effect at the relevant time, appellant's second conviction was automatically enhanced to a fourth-degree felony based upon his prior drug conviction. In 1991, appellant was convicted of multiple federal drug offenses.

{¶ 5} On July 1, 1996, in excess of a decade after the 1986 plea at issue in this case was entered, Senate Bill 2 was enacted. It amended portions of Ohio's criminal statutes, including deletion of the enhancement provision applicable to appellant on January 22, 1986. S.B. 2 did not apply retroactively to sentences imposed or pending at the time of enactment.

{¶ 6} On December 15, 2005, appellant filed a motion to reduce his sentence or dismiss the underlying offense premised upon the alleged retroactive application of S.B. 2 to his case. On June 8, 2007, appellant's motion was rejected on both procedural and substantive grounds, including the rejection of the S.B. 2 retroactivity claim on its merits. On April 4, 2008, this court affirmed the judgment of the trial court. In

November 2008, appellant's motion for certiorari to the Ohio Supreme Court was rejected.

{¶ 7} On December 29, 2009, appellant filed a motion to withdraw his 1986 guilty plea, again premised upon the rejected retroactivity claim. On July 29, 2009, the trial court denied appellant's motion to withdraw plea. Timely notice of appeal was filed.

{¶ 8} Crim.R. 32.1 establishes, "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." In conjunction with the above, this court reviews the trial court's determination on a Crim.R. 32.1 motion pursuant to the abuse of discretion standard. The denial of a Crim.R. 32.1 motion cannot be reversed absent demonstration that it was unreasonable, arbitrary or unconscionable. *State v. Xie* (1992), 62 Ohio St.3d 521, 526.

{¶ 9} In applying these controlling legal principles to this case, we note that appellant has unsuccessfully, repeatedly asserted that S.B. 2, enacted in 1996, retroactively applies to his 1986 criminal case. This argument has been offered and rejected by the trial court, this court, and the Ohio Supreme Court. Appellant has advanced the instant case upon this same legal premise. S.B. 2 did not and does not apply to appellant's cases completed or pending on July 1, 1996.

{¶ 10} The record contains no evidence that the trial court acted unreasonably, arbitrarily, or unconscionably in denying appellant's motion to withdraw his 1986 plea

nearly a quarter-century after it was entered. We find appellant's assignment of error not well-taken.

{¶ 11} Wherefore, we find that substantial justice has been done in this matter. Judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

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.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.
