

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

State of Ohio

Court of Appeals No. L-09-1299

Appellee

Trial Court No. CR0200902164

v.

Enrique Martinez

DECISION AND JUDGMENT

Appellant

Decided: July 9, 2010

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Timothy F. Braun, Assistant Prosecuting Attorney, for appellee.

John Thebes, for appellant.

* * * * *

OSOWIK, P.J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas which denied appellant's Crim.R. 32.1 motion to withdraw plea. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Enrique Martinez, sets forth the following single assignment of error:

{¶ 3} "THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING APPELLANT'S MOTION TO WITHDRAW HIS GUILTY PLEA."

{¶ 4} The following undisputed facts are relevant to the issues raised on appeal. On June 11, 2009, appellant was indicted on two alternative murder counts with accompanying firearm specifications. On June 18, 2009, appellant was arraigned. Defense counsel Cimmerman was appointed to represent appellant.

{¶ 5} Following extensive communications and negotiations between the parties, a negotiated plea agreement was reached. On October 2, 2009, appellant pled guilty to the lesser of the two counts in exchange for dismissal of the remaining count and dismissal of all firearm specifications. Notably, in the course of the plea colloquy, appellant conceded that he had shot and killed the victim.

{¶ 6} On October 5, 2009, defense counsel advised the court prior to sentencing that appellant wished to withdraw his plea. Defense counsel sought leave to withdraw and simultaneously conveyed to the court his professional opinion that appellant did not possess a legitimate legal basis to warrant a withdrawal of plea.

{¶ 7} On October 8, 2009, substitute counsel entered an appearance and original counsel's motion to withdraw was granted. On October 14, 2009, the trial court conducted a comprehensive Crim.R. 32.1 evidentiary hearing on appellant's motion to withdraw plea. In support of his motion, appellant submitted a one-page affidavit.

Appellant did not testify. The court heard extensive and detailed testimony from appellant's trial counsel pertinent to the motion. Appellant's substitute counsel fully cross-examined appellant's trial counsel. Appellant's motion to withdraw his negotiated plea was denied. Timely notice of appeal was filed.

{¶ 8} In his single assignment of error, appellant asserts that the trial court abused its discretion in denying his Crim.R. 32.1 motion to withdraw plea. 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."

{¶ 9} It is well-established that 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. In accordance with the abuse of discretion standard of appellate review, the focus on appeal centers upon an examination of the underlying evidentiary hearing in which appellant failed to persuade the trial court that he possessed a legitimate basis in support of the motion to withdraw plea.

{¶ 10} We have carefully reviewed and considered the record of evidence in this matter. In support of his motion, appellant submitted an affidavit. The crux of the affidavit is appellant's unsupported averment that, "I thought that I would be released after fifteen years of incarceration." Regardless of its legal relevance, there is no evidence in the record consistent with appellant's claimed misperception.

{¶ 11} In conjunction with appellant's position, substitute counsel stated to the trial court at the motion hearing, "Mr. Martinez was under the incorrect assumption, through no fault of the court, no fault of defense counsel, that he was going to be released *possibly* [emphasis added] at the end of 15 years incarceration." Contrary to appellant's unsupported and legally irrelevant conclusion that the trial court would elect to impose a sentence of no more than 15 years, the record shows repeatedly that appellant was clearly and recurrently made aware of the potential range of sentence to be expected from his plea.

{¶ 12} The following exchange transpiring during the motion hearing is illustrative:

{¶ 13} "COURT: How many times would you suspect, if you could guess, did the court go over the fact that there is no guarantee of parole, that the defendant should presume it was a life sentence and that he would serve his life in the state penitentiary?

{¶ 14} "MR. CIMMERMAN: Too many times for my liking.

{¶ 15} "COURT: I said it?

{¶ 16} "MR. CIMMERMAN: It was repeatedly. Repeatedly.

{¶ 17} "COURT: Right. Did at any point in time the defendant indicate to you that he didn't understand that?

{¶ 18} "MR. CIMMERMAN: No."

{¶ 19} In conformity with this, the trial court likewise stated, "So there were at least six, some could argue seven times that this court went over that same fact and put it in very basic terms of dying in the penitentiary, no flat time, no guarantee of getting out."

{¶ 20} Similarly, the record repeatedly reflects that appellant neither expressed nor exhibited any indicia of confusion, compromised competency or deficient understanding of any of the ramifications during any stage of the case. Trial counsel clearly testified at appellant's motion hearing that appellant does not possess an inadequate intellectual capacity and appellant consistently understood what was occurring. In turn, appellant did not testify. No other testimony or evidence was furnished contrary to counsel's statement to the court unambiguously attesting to the legal competency of appellant.

{¶ 21} In applying the controlling legal principles to the record of evidence in this matter, we find that the record is devoid of any evidence in support of the notion that denial of appellant's Crim.R. 32.1 motion to withdraw plea was arbitrary, unreasonable or unconscionable. Conversely, the record clearly and consistently reflects the propriety of the motion hearing and judgment. We find appellant's single assignment of error not well-taken.

{¶ 22} Wherefore, we find that substantial justice has been done in this matter. The judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the cost 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.

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.

JUDGE

Keila D. Cosme, J.
CONCUR.

JUDGE

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