

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

State of Ohio

Court of Appeals No. S-09-028

Appellee

Trial Court No. 09 CR 62

v.

Dennis Richey

DECISION AND JUDGMENT

Appellant

Decided: January 21, 2011

* * * * *

Thomas L. Stierwalt, Sandusky County Prosecuting Attorney, and
Norman P. Solze, Assistant Prosecuting Attorney, for appellee.

Megan K. Mattimoe, for appellant.

* * * * *

COSME, J.

{¶1} Appellant, Dennis J. Richey, appeals from a judgment of the Sandusky County Common Pleas Court, following his guilty plea to three counts of trafficking in cocaine. Appellant complains that the trial court abused its discretion in denying his presentence motion to withdraw his plea. Appellant asserts that his trial counsel failed to provide effective assistance of counsel, and that the ineffective assistance of counsel

affected the plea proceedings. Because we conclude that the trial court acted within its discretion in denying appellant's motion to withdraw his plea, we affirm.

I. BACKGROUND

{¶2} On January 9, 2009, appellant was indicted on five counts of trafficking in cocaine. Counts 1, 3, and 5 alleged violations of R.C. 2925.03(A)(1) and (C)(4)(b), all felonies of the fourth degree because they each included a specification that the offense had been committed in the vicinity of a school. Counts 2 and 4 alleged violations of R.C. 2925.03(A)(1) and (C)(4)(a), both felonies of the fifth degree.

{¶3} At his arraignment, appellant pled not guilty. On the morning of trial, on June 2, 2009, appellant entered a plea of guilty to Counts 2, 3, and 4, in exchange for the state's dismissal of Counts 1 and 5, and the dismissal of a separate criminal case, case No. 08CR1118.

{¶4} Two months later, at the sentencing hearing on August 7, 2009, appellant moved to withdraw his guilty plea and asked for new counsel, asserting that he was dissatisfied with trial counsel. Appellant complained that following the plea change he had made numerous phone calls to trial counsel but that she had not returned his calls.

{¶5} The trial court conducted a brief hearing on appellant's motions. Appellant's trial counsel conceded that appellant had called her and that she had not returned his calls. Trial counsel related that she believed appellant wanted to discuss a separate criminal matter in which appellant had been ordered to report to jail. In that case, counsel filed a motion asking that appellant not begin his sentence until he was

sentenced in this case. Since that motion had not been ruled upon, trial counsel told appellant to report to jail. Believing that there was nothing else that could be done to defer the imposition of sentence, she did not return appellant's calls. Trial counsel testified that she was not aware that appellant was dissatisfied with his plea, or that he wished to discuss the plea, noting that his messages only referenced the other case.

{¶6} Following the hearing on appellant's motions, the trial court denied both motions. The trial court then sentenced appellant to a total of 40 months in prison. Appellant timely appealed his conviction and sentencing, asserting two assignments of error.

II. INEFFECTIVE ASSISTANCE OF COUNSEL

{¶7} We will address appellant's assignments out of order. In his second assignment of error, appellant maintains:

{¶8} "Trial counsel did not effectively assist appellant in his defense in violation of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article One Sections Ten and Sixteen of the Ohio State Constitution."

{¶9} We disagree.

{¶10} The Sixth Amendment to the United States Constitution guarantees a criminal defendant the effective assistance of counsel. *McMann v. Richardson* (1970), 397 U.S. 759, 771. To prevail on a claim of ineffective assistance of counsel, appellant must meet the two-prong test established in *Strickland v. Washington*, (1984), 466 U.S. 668, 687. As applied to pleas, the *Strickland* test requires an appellant to show that (1)

his trial counsel's performance was deficient, and (2) "there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." See *Hill v. Lockhart* (1985), 474 U.S. 52, 57-59. See, also, *State v. Xie* (1992), 62 Ohio St.3d 521, 525.

{¶11} Appellant has the burden of proof and must overcome the strong presumption that counsel's performance was adequate or that counsel's action might be sound trial strategy. *State v. Smith* (1985), 17 Ohio St.3d 98, 100. "Ultimately, the reviewing court must decide whether, in light of all the circumstances, the challenged act or omission fell outside the wide range of professionally competent assistance." *State v. DeNardis* (Dec. 29, 1993), 9th Dist. No. 2245, citing *Strickland*, *supra*, at 689. Furthermore, an attorney properly licensed in Ohio is presumed competent. *State v. Lott* (1990), 51 Ohio St.3d 160, 174. *Vaughn v. Maxwell* (1965), 2 Ohio St.2d 299, 301.

{¶12} In demonstrating prejudice, an "[appellant] must show that he would not have pleaded guilty to the reduced charge if his attorney's advice had been correct." *Xie*, *supra*. In order to determine whether an appellant pled based upon trial counsel's misinformation, the "court will assess the totality of the circumstances, with particular emphasis on the Crim.R. 11 allocution." *State v. Kazymyriw* (May 14, 1997), 9th Dist. No. 96CA006474.

{¶13} "Generally, prejudice is not shown from counsel's erroneous advice and incorrect speculation regarding the consequences of a defendant's plea." *State v. Buehl* (April 2, 1997), 9th Dist. No. 18041.

{¶14} Appellant argues that trial counsel was ineffective because: (1) trial counsel failed to return appellant's phone calls; (2) trial counsel failed to argue appellant's motion to withdraw his plea; and (3) trial counsel testified about her communications with appellant.

(1) Failure of Trial Counsel to Return Appellant's Phone Calls

{¶15} Appellant claims he was prejudiced because trial counsel did not return his phone calls. The phone calls that appellant complains of, however, were made to trial counsel after the plea change, not before. Appellant does not complain that he received erroneous advice from trial counsel prior to the plea change, but suggests that trial counsel's failure to communicate with him is evidence of counsel's ineffectiveness. Arguing that the breakdown in communication with trial counsel constituted ineffective assistance, appellant insists that his plea could not have been knowingly, intelligently, or voluntarily made.

{¶16} Appellant relies in part, upon *State v. Dellinger*, 6th Dist. No. H-02-007, 2002-Ohio-4652, as supporting his proposition that evidence of a lack of communication between defendant and his attorney is sufficient upon which a motion to withdraw a plea may be considered. The issue in *Dellinger*, however, was not whether counsel was ineffective, but whether the failure to appoint substitute counsel was prejudicial to appellant. In *Dellinger*, "appellant's public defender appeared at the motion hearing with the understanding that his services had been terminated. Yet, no substitute counsel was

appointed and the testimony the public defender offered was deleterious to his client/former client's position." Id. at ¶ 12.

{¶17} In *Dellinger*, this court concluded that application of the factors articulated in *State v. Griffin* (2001), 141 Ohio App.3d 551, 554, compelled a finding that "appellant had a reasonable and legitimate basis for withdrawing his plea," in part because "there was conflicting evidence as to the quality of representation afforded appellant." Id. at ¶ 18-19.

{¶18} Appellant suggests that like *Dellinger*, counsel in this case was explaining her own actions rather than advocating her client's motion to withdraw his plea and for substitute counsel.

{¶19} The issue before us, however, is not whether the trial court failed to appoint substitute counsel, but whether trial counsel was ineffective, or failed to ensure that appellant's plea was made knowingly, intelligently, or voluntarily.

{¶20} Relevant to our analysis, this court in *State v. Baranowski*, 6th Dist. No. WM-05-010, WM-05-011, 2005-Ohio-6131, ¶ 8, rejected a claim that evidence of a breakdown in communications between appellant and his counsel was sufficient to warrant a finding that trial counsel was incompetent and that the guilty plea should be withdrawn, noting that "[t]he alleged miscommunication between appellant and his counsel occurred after the entry of the plea." In *Baranowski*, "[a]ppellant's previous counsel testified that appellant's collect calls were denied by his office, and there was 'a

lack of trust and a breakdown of communication between attorney and client' after appellant had been denied release on bond to take care of some business affairs." *Id.*

{¶21} Observing that "[t]he requirement of competent counsel is to prevent failure by attorneys to explain to their clients the waiver of their rights and the consequences of entering a guilty plea[,]" the *Baranowski* court concluded that prior counsel was not ineffective at the time of the plea because appellant's counsel was competent. *Id.* The *Baranowski* court noted that the record reflected that "appellant's counsel answered questions and explained the right of appeal, the procedure for obtaining an appeal, and that appellant should not rely on a right to appeal to avoid the sentence imposed." *Id.* In addition, appellant stated that he was "satisfied" with his previous counsel's services as an attorney. *Id.*

{¶22} In this case, appellant does not argue that trial counsel did not explain the effect of the plea, the maximum penalties, the reduced charges that appellant would be pleading to, the maximum sentence for each of those reduced charges, and postrelease control.

{¶23} In fact, the trial court ascertained that appellant was aware of his constitutional rights, and that he knew that he was relinquishing those rights upon his plea of guilty. The trial court's explanation included appellant's Fifth Amendment privilege against compulsory self-incrimination, the right to a trial by jury, the right to subpoena witnesses, the right to appeal, the right to require the state to prove guilt beyond

a reasonable doubt and the right to confront his accusers. The trial court also determined that appellant was not promised or offered anything in exchange for the plea.

{¶24} As well, appellant testified at the plea change hearing that he was satisfied with his attorney's representation. Similar to *Baranowski*, appellant's dissatisfaction with his trial counsel manifested itself after the plea change hearing.

(2) Trial Counsel Failed to Argue Appellant's Motion to Withdraw Plea

{¶25} Next, appellant argues that trial counsel was ineffective because trial counsel failed to argue appellant's motion to withdraw his plea or his motion for new counsel.

{¶26} Although we agree with appellant that trial counsel's testimony was more in the nature of explaining her own actions rather than advocating appellant's position, this alone is not enough. Appellant must demonstrate not only deficient performance, but also that it resulted in prejudice to him. See *City of Akron v. Radcliff* (May 3, 2000), 9th Dist. No. 19704.

{¶27} After reviewing the record, we conclude that appellant has failed to demonstrate that but for trial counsel's conduct, he would have not entered into a guilty plea in exchange for the dismissal of several counts and the dismissal of another criminal case. Appellant does not argue that communication with counsel was lacking prior to, or during the plea change.

{¶28} As to appellant's argument that trial counsel should have advocated for substitute counsel, appellant fails to articulate what trial counsel should have said to more forcefully make the point that communication was lacking.

{¶29} An indigent defendant has a right to competent counsel, not a right to counsel of his own choosing. *State v. Blankenship* (1995), 102 Ohio App.3d 534, 558, affirmed (1996), 74 Ohio St.3d 522. The right to competent counsel does not require that a criminal defendant develop and share a "meaningful relationship" with his attorney. *Morris v. Slappy* (1983), 461 U.S. 1, 13-14. Rather, an indigent defendant is entitled to the appointment of substitute counsel only upon a showing of good cause, such as an actual conflict of interest, a complete breakdown in communication, or an irreconcilable conflict which leads to an apparently unjust result. *Blankenship*, supra.

{¶30} Furthermore, to discharge a court-appointed attorney, the defendant must show "a breakdown in the attorney-client relationship of such magnitude as to jeopardize the defendant's right to effective assistance of counsel." *State v. Coleman* (1988), 37 Ohio St.3d 286, paragraph four of the syllabus. The conflict must be so severe that a denial of substitution of counsel would implicate a violation of the Sixth Amendment right to counsel. *Blankenship*, supra. In the absence of such a Sixth Amendment concern, the decision of a trial court to refuse substitution of counsel will be reversed only if the court has abused its discretion. *State v. Pruitt* (1984), 18 Ohio App.3d 50, 57.

{¶31} In this case, the breakdown in communication between appellant and his trial counsel after entering the plea did not warrant a finding that trial counsel was ineffective or that appellant's plea was not made knowingly, intelligently, or voluntarily.

(3) Trial Counsel's Testimony

{¶32} Appellant argues that trial counsel's testimony about communication between the two of them is further evidence that she was ineffective. However, trial counsel's explanation for her failure to return phone calls did not breach any client confidentiality or trial strategy. Her testimony, in fact, supported appellant's assertion that he had tried to bring his concern to the court before the sentencing hearing.

{¶33} There is no evidence that trial counsel's testimony was privileged. Nor is there any evidence that trial counsel's testimony was prejudicial to appellant.

{¶34} Accordingly, appellant's second assignment of error is not well-taken.

III. WITHDRAWAL OF GUILTY PLEA

{¶35} As such, we turn to appellant's first assignment of error to determine whether the trial court abused its discretion in refusing to allow appellant to withdraw his guilty plea. The allegation that trial counsel was ineffective is only one of several factors we must consider in determining whether appellant had a reasonable and legitimate reason for withdrawing his plea.

{¶36} In his first assignment of error, appellant maintains:

{¶37} "Appellant did not knowingly, voluntarily and intelligently enter his guilty plea in violation of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article One Sections Ten and Sixteen of the Ohio State Constitution."

{¶38} Appellant argues that the trial court should have granted his motion to withdraw his plea since he had a right to competent counsel, he had a right to call witnesses in support of his motion, and his motion was timely.

{¶39} We disagree.

{¶40} Crim.R. 32.1 permits a defendant to file a presentence motion to withdraw his plea. However, this does not equate to an absolute right to withdraw the plea. *State v. Xie* (1992), 62 Ohio St.3d 521, paragraph one of the syllabus. While a presentence motion to withdraw a plea is generally "to be freely allowed and treated with liberality" by the trial court, the decision to grant or deny the motion rests within the sound discretion of the trial court. *Id.* at 526, citing *Barker v. U.S.* (C.A.10, 1978), 579 F.2d 1219, 1223.

{¶41} In order to prevail on a motion to withdraw a plea, a defendant must provide a reasonable and legitimate reason for withdrawing his plea. *Xie*, *supra*, at 527. See *State v. Van Dyke*, 9th Dist. No. 02CA008204, 2003-Ohio 4788, ¶ 10. Requiring a defendant to provide a "reasonable and legitimate" reason to withdraw a plea helps protect "the state's interest in preserving [] pleas." *State v. DeWille* (Nov. 4, 1992), 9th Dist. No. 2101. Determining whether a defendant's grounds for the motion to withdraw a plea are reasonable and legitimate also lies within the trial court's sound discretion.

State v. Rosemark (1996), 116 Ohio App. 3d 306, 308. Moreover, "the good faith, credibility and weight of the movant's assertions in support of the motion are matters to be resolved by [the trial] court[.]" and therefore, a reviewing court should defer to the trial court's judgment. (Internal quotations omitted.) *Xie*, supra, at 525.

{¶42} It is not the role of the appellate court to conduct a de novo review; however, the appellate court may reverse the trial court's denial if the trial court acts unjustly or unfairly. *Id.* at 526, 527.

{¶43} Factors that are weighed in considering a presentence motion to withdraw a plea include the following: (1) whether the state will be prejudiced by withdrawal; (2) the representation afforded to the defendant by counsel; (3) the extent of the Crim.R. 11 plea hearing; (4) the extent of the hearing on the motion to withdraw; (5) whether the trial court gave full and fair consideration to the motion; (6) whether the timing of the motion was reasonable; (7) the reasons for the motion; (8) whether the defendant understood the nature of the charges and potential sentences; and (9) whether the accused was perhaps not guilty or had a complete defense to the charge. *State v. Thomas* (Dec. 17, 1998), 7th Dist. No. 96 CA 223, 96 CA 225, and 96 CA 226, citing *State v. Fish* (1995), 104 Ohio App.3d 236, 240.

{¶44} As stated earlier, the reason for the desire to withdraw a prior guilty plea is only one factor out of many; no one factor is conclusive. *Fish*, supra. Thus, we turn to the factors first set forth in *Fish*.

(1) Prejudice to State by Withdrawal of Plea

{¶45} There was no allegation that the state's case would be prejudiced upon withdrawal of the plea. Lack of prejudice to the state is said to be one of the most important factors. *Fish*, supra, at 239-240. However, that prejudice usually involves a scenario where a state's witness had become unavailable. *State v. Boyd* (Oct. 22, 1998), 10th Dist. No. 97APA12-1640, appeal not allowed (1999), 85 Ohio St.3d 1424 (listing factors the trial court properly may consider in exercising its discretion). There is no allegation in this case that any witnesses are unavailable.

(2) Representation Afforded by Counsel

{¶46} As we noted above in response to appellant's second assignment of error, appellant received effective assistance of counsel at the plea change hearing. There was also no evidence that appellant's counsel was ineffective during the hearing on appellant's motion to withdraw his plea. Thus, for purposes of this factor, we presume that appellant's trial counsel was competent.

(3) Extent of Crim.R. 11 Plea Change Hearing

{¶47} Crim.R.11 sets forth the procedural requirements for accepting a guilty plea. These procedural requirements are consistent with constitutional protections afforded a defendant. *State v. Stewart* (1977), 51 Ohio St.2d 86, 88; *State v. Ingram* (Mar. 5, 2002), 10th Dist. No. 01AP-854.

{¶48} At the plea hearing, the trial court orally conducted a plea colloquy with appellant addressing appellant's constitutional rights, appellant's postrelease control, the possible sanctions and maximum sentence, and appellant's voluntariness in making the

plea. Additionally, appellant completed and executed a written plea document. The trial court also inquired with appellant to ensure that he understood the contents of the written plea document.

{¶49} In this case, appellant fails to specify a single instance in his plea proceeding in which the trial court failed to comply with Crim.R. 11(C). A "defendant's failure to allege any specific error[] in the trial court's recitation at the plea hearing constitutes clear evidence that defendant suffered no prejudice." *State v. Harris* (Dec. 31, 2001), 10th Dist. No. 01AP-340. Upon review of the record, we conclude that the trial court complied fully with the requirements set forth in Crim.R. 11(C) and that appellant's plea was made knowingly, intelligently, and voluntarily.

(4) Extent of Hearing on Motion to Withdraw

{¶50} Appellant asserts that the trial court's hearing on his motion to withdraw his guilty plea was lacking because trial counsel was ineffective, the trial court refused to appoint substitute counsel, and appellant was not permitted to call any witnesses.

{¶51} Appellant argues that since trial counsel was ineffective, the trial court should have appointed substitute counsel. We have already addressed appellant's allegations that trial counsel was ineffective and concluded that trial counsel did not fail to zealously advocate for the withdrawal of the plea or substitution of new counsel.

{¶52} Next, appellant claims that he was prejudiced by the trial court's refusal to allow him to call his aunt as a witness to argue that the ineffectiveness of trial counsel

was prejudicial. Appellant argues that he was deprived of his right to use the compulsory power of the court to call witnesses on his behalf.

{¶53} Crim.R. 11(C) requires the trial court to inform the defendant and to determine that he understands that by entering a guilty plea, he is giving up certain rights, including the right to have compulsory process for obtaining witnesses in his favor. The right to compulsory process is a constitutionally protected right and thus is subject to strict compliance under Crim.R. 11(C)(2)(c). *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, ¶ 18. The trial court must explain that constitutional right to the defendant in a manner that is reasonably intelligible to the defendant. *State v. Ballard* (1981), 66 Ohio St.2d 473, paragraph two of the syllabus.

{¶54} In this case, appellant is asserting that the compulsory process right granted to him under Crim.R. 11 also extends to the hearing on his motion to withdraw his plea. "The right [to compulsory process] * * * is not absolute and defendant must indicate how the production of the witness would benefit his defense." (Citations omitted.) *State v. Owens* (1975), 51 Ohio App.2d 132, 148. Thus, although a defendant has a right to present, on defense, witnesses in his own behalf, a defendant has no right to present testimony of witnesses whose testimony does not pass the threshold tests of relevancy and materiality.

{¶55} Appellant argues that his aunt's testimony would have supported his argument that trial counsel failed to respond to messages from appellant and his family. However, trial counsel's failure to return appellant's calls is not in dispute. Trial counsel

testified that she did not return any of appellant's phone calls. The aunt's testimony is not material to appellant's motion to withdraw his guilty plea. Trial counsel's failure to return appellant's calls was not relevant to whether there was a reasonable and legitimate basis for the withdrawal of the plea.

(5) Whether Trial Court gave Full and Fair Consideration to the Motion

{¶56} The evidence does not support appellant's claim that the trial court did not fully and fairly consider appellant's motion to withdraw his guilty plea. The trial court clearly considered the fact that appellant was afforded a Crim.R. 11 hearing, appellant's concession during the plea change hearing that he was satisfied with counsel, and appellant's admission that he was guilty of some of the charges. The trial court was also fully aware that but for trial counsel's failure to respond to appellant's phone calls, this matter might have been before the trial court much earlier. However, the fact remains that appellant did not step forward with any specific errors about the Crim.R. 11 hearing or any concerns about counsel other than her failure to return appellant's phone calls after he entered his guilty plea, until after the trial court had accepted his guilty plea.

(6) Whether the Timing of the Motion was Reasonable

{¶57} Appellant complains that his motion to withdraw his guilty plea was timely, and suggests that the trial court failed to consider that the delay was occasioned by the failure of appellant's trial counsel to return his calls. Although the trial court noted that "the timing of appellant's request shows it to be suspect[,] the trial court was cognizant of the fact that it would have learned of appellant's desire to withdraw his guilty plea

much sooner had appellant's counsel returned his phone calls. In *State v. Cuthbertson* (2000), 139 Ohio App.3d 895, 900, the court concluded that appellant's letter, sent to the judge one week after the plea requesting that it be withdrawn was not untimely.

However, in *Cuthbertson*, appellant's letter to the court stated specific reasons in support of his request to withdraw his plea. In this case, appellant has failed to articulate any reasons supporting a withdrawal the plea.

(7) Reasons for the Motion

{¶58} In this case, the trial court denied appellant's motion to withdraw his plea by stating that "It appears to be that [appellant] had second thoughts." According to appellant, he wanted to withdraw his plea because of "the stuff that I know now if I would have knew it when we did the original plea." He did not, however, state any specific reasons at the hearing or in his appellate brief. He did not specify what he did not know at the time of the plea change, or what trial counsel may not have told him.

{¶59} A mere change of heart does not constitute "a legitimate basis for [the] withdrawal of a plea." *State v. Miller* (July 19, 2000), 9th Dist. No 99CA007334. See *State v. Lawhorn*, 6th Dist. No. L-08-1153, 2009-Ohio-3216, ¶ 23; *State v. Johnson*, 6th Dist. No L-09-1164, 2010-Ohio-4706, ¶ 6.

(8) Whether the Defendant Understood the Nature of the Charges

{¶60} The record shows that appellant clearly understood the nature of the charges and the possible penalties. Because appellant voluntarily entered his guilty plea, clearly understanding the nature of the charges and the possible penalties, and because

the trial court gave appellant's motion to withdraw his plea the consideration it merited, in light of the lack of evidence offered to support the claim that appellant was innocent, we hold that the trial court did not abuse its discretion in denying appellant's motion to withdraw his plea of guilty. See *State v. McNeil* (2001), 146 Ohio App.3d 173, 177.

{¶61} Further, we concluded that appellant was fully advised of his rights under Crim.R. 11. The fact that appellant was fully advised of his rights is highly relevant to his understanding of the situation he faced. *State v. Moody* (Dec. 29, 2000), 7th Dist. No. 99 CA 45.

(9) Whether the Accused Was Not Guilty or Had a Complete Defense to the Charge

{¶62} In this case, appellant admitted that he committed some of the offenses charged but argued that other charges in the indictment were either "false" or based on a "misunderstanding." This is not a case where appellant has consistently maintained that he was innocent, or that he had some defense. It is not clear that appellant even had a viable defense to present if he had been permitted to withdraw his plea.

{¶63} Further, appellant did not provide the trial court with any evidence to support his claims of innocence or establish a meritorious defense. *State v. Scott*, 6th Dist. No. S-05-035, 2006-Ohio-3875, ¶ 13. "[B]old assertions without evidentiary support simply should not merit the type of scrutiny that substantiated allegations would merit." *State v. Hall* (Apr. 27, 1989), 8th Dist. No 55289.

{¶64} Thus, we conclude that the trial court gave appropriate consideration to appellant's motion to withdraw his plea in light of the lack of any evidentiary support offered for the assertion that he was innocent. *McNeil*, 146 Ohio App.3d at 176.

IV. CONCLUSION

{¶65} The trial court did not abuse its discretion in refusing to allow appellant to withdraw his plea. Trial counsel was not ineffective, and appellant was not prejudiced. There was no reasonable and legitimate basis for the withdrawal of the plea. Applying the factors set forth in *Fish*, we must conclude: (1) there was no evidence that the state would be unfairly prejudiced by a grant of the motion; (2) appellant was represented by competent counsel; (3) the Crim.R. 11 hearing was conducted appropriately; (4) appellant was heard on the motion to withdraw; (5) the trial court gave full and fair consideration to the motion; (6) the timing of the motion was reasonable, in light of the circumstances; (7) appellant could not articulate any reasons for the motion; (8) appellant clearly understood the nature of the charges and the potential sentences; and (9) there was no evidence that appellant was perhaps not guilty or had a complete defense to the charge. Consideration of these factors makes clear that the trial court did not abuse its discretion in denying appellant's motion to withdraw his plea.

{¶66} On consideration whereof, the judgment of the Sandusky County Common Pleas Court 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.

Peter M. Handwork, J.

JUDGE

Thomas J. Osowik, P.J.

JUDGE

Keila D. Cosme, 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.
