

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

State of Ohio

Court of Appeals No. L-11-1042

Appellee

Trial Court No. CR0201001579

v.

George Ridley

DECISION AND JUDGMENT

Appellant

Decided: September 14, 2012

* * * * *

Paul A. Dobson [Special Prosecutor], Wood County Prosecuting Attorney, and David E. Romaker, Jr. and Aaron T. Lindsey, Assistant Prosecuting Attorneys, for appellee.

Tim A. Dugan, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Defendant-appellant, George Ridley, appeals the February 1, 2011 judgment of the Lucas County Court of Common Pleas which, after denying his presentence motion to withdraw his guilty plea, sentenced him to one year of imprisonment. Because

we find that the court did not abuse its discretion when it denied appellant's motion to withdraw his plea, we affirm.

{¶ 2} On March 31, 2010, appellant was indicted on one count of intimidation of an attorney, in violation of R.C. 2921.04(B), a third degree felony, and one count of retaliation, in violation of R.C. 2921.05(A), a third degree felony. On April 12, 2010, appellant was indicted on an additional count of intimidation of an attorney, in violation of R.C. 2921.04(B). The charges stemmed from an alleged incident in a felony case. Because two of the counts involved a Lucas County assistant prosecuting attorney and a judge, the matter was referred to a visiting judge and assigned a special prosecutor. Appellant entered not guilty pleas to the charges.

{¶ 3} On December 7, 2010, appellant withdrew his not guilty pleas and entered guilty pleas to the three counts in the indictment. Thereafter on January 25, 2011, appellant, pro se, filed a motion to withdraw his guilty pleas. Appellant also filed a motion to disqualify his counsel. On January 31, 2011, at the start of the sentencing hearing appellant's motion to withdraw his plea was denied. Appellant was then sentenced to one-year prison terms on each count to be served concurrently but consecutively to his sentence in the prior felony case. This appeal followed.

{¶ 4} Appellant now raises one assignment of error for our review:

- 1) The trial court abused its discretion by denying appellant's motion to withdraw his guilty plea prior to being sentenced.

{¶ 5} In appellant's sole assignment of error he contends that the court should have granted his presentence motion to withdraw his guilty plea. A presentence motion to withdraw a guilty or no contest plea is to be freely and liberally granted. *State v. Xie*, 62 Ohio St.3d 521, 526, 584 N.E.2d 715 (1992). The *Xie* court further indicated that a defendant does not have an absolute right to withdraw a guilty plea prior to sentencing. *Id.* at paragraph one of the syllabus. Rather, the court must to conduct a hearing on the motion to determine "whether there is a reasonable and legitimate basis for the withdrawal of the plea." *Id.* The court further held that "[t]he decision to grant or deny a presentence motion to withdraw a guilty plea is within the sound discretion of the trial court." *Id.* at paragraph two of the syllabus. Accordingly, in order to find that the trial court abused its discretion, a reviewing court must find that the court's ruling was "unreasonable, arbitrary or unconscionable." *Id.* at 527.

{¶ 6} In considering whether a presentence motion to withdraw a plea should have been granted, an appellate court should consider:

- (1) [W]hether the prosecution would be prejudiced if the plea was vacated;
- (2) whether the accused was represented by highly competent counsel;
- (3) whether the accused was given a full Crim.R. 11 hearing;
- (4) whether a full hearing was held on the motion;
- (5) whether the trial court gave full and fair consideration to the motion;
- (6) whether the motion was made within a reasonable time;
- (7) whether the motion set forth specific reasons for the withdrawal;
- (8) whether the accused understood the

nature of the charges and possible penalties; and (9) whether the accused was perhaps not guilty or had a complete defense to the crime. *State v. Eversole*, 6th Dist. Nos. E-05-073, E-05-076, E-05-074, E-05-075, 2006-Ohio-3988, ¶ 13, citing *State v. Fish*, 104 Ohio App.3d 236, 240, 661 N.E.2d 788 (1st. Dist.1995).

{¶ 7} In his sole assignment or error, appellant contends that he was not afforded a hearing on his motion to withdraw that reflected its substantive merit. Specifically, appellant's motion argued that his attorney and the trial judge threatened and coerced him into entering the guilty plea. Appellant further argued that his attorney stated that he would receive a harsher sentence if he wasted the court's time by proceeding to trial. Appellant professed his innocence.

{¶ 8} At the January 31, 2011 sentencing hearing, held one week following appellant's motion to withdraw his plea, the trial court first inquired as to the basis for the motion stating: "Do you want to be heard as it relates to that or do you want your attorney to address the Court on that issue?" Appellant responded: "It says what it says." Accordingly, we conclude that the court gave appellant the opportunity to explain why he should be entitled to withdraw his plea. *See State v. Williams*, 3d Dist. No. 1-10-24, 2010-Ohio-5193, ¶ 4; *State v. Robinson*, 8th Dist. No. 89651, 2008-Ohio-4866, ¶ 33.

{¶ 9} Reviewing the *Fish, supra*, factors we note that appellant was represented by counsel who he retained and who was commended by the trial court for securing acquittals by the jury of the most serious charges in the initial felony case. During the

December 6, 2010 plea hearing, appellant's waiver of his constitutional rights was explained as was the possible sentence he faced. Appellant specifically stated that he was not threatened into making the plea and that the promise made was that he would be sentenced to one-year prison terms on each count, the three to be served concurrently but consecutive to the eight-year term in the initial criminal case. The transcripts in the record demonstrate that appellant was aware of the nature of the charges.

{¶ 10} Although appellant claimed his innocence at the sentencing hearing, he admitted to sending an "inflammatory" letter to his attorney. The record also contains a letter appellant wrote to the assistant prosecuting attorney/victim apologizing for his "rude and disrespectful behavior." Thus, we find that appellant cannot demonstrate any likelihood of his innocence or defense to the charges.

{¶ 11} Based on the foregoing, we find that the trial court did not abuse its discretion when it denied appellant's motion to withdraw his guilty pleas. Appellant's assignment of error is not well-taken.

{¶ 12} On consideration whereof, we find that appellant was not prejudiced or prevented from having a fair proceeding and the judgment of the Lucas County Court of Common Pleas is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of 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.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, 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>.