

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

State of Ohio

Court of Appeals No. L-13-1103

Appellee

Trial Court No. CR0201202547

v.

Vashon Goings

**DECISION AND JUDGMENT**

Appellant

Decided: May 30, 2014

\* \* \* \* \*

Julia R. Bates, Lucas County Prosecuting Attorney, and  
Evy M. Jarrett, Assistant Prosecuting Attorney, for appellee.

Patricia Horner, for appellant.

\* \* \* \* \*

**SINGER, J.**

{¶ 1} Appellant, Vashon Goings, appeals from the May 28, 2013 judgment of the Lucas County Court of Common Pleas. The court convicted appellant of one count of burglary and one count of attempted felonious assault following the acceptance of his

*Alford*<sup>1</sup> plea. The court sentenced appellant to serve two 30-month terms of imprisonment. On appeal, appellant asserts the following assignments of error:

I. THE LOWER COURT ERRED IN DENYING DEFENDANT’S MOTION TO WITHDRAW THE PLEA.

II. THE TRIAL COURT ERRED IN ORDERING CONSECUTIVE SENTENCES.

{¶ 2} On appeal, appellant argues in his first assignment of error that the trial court erred by denying appellant’s presentence motion to withdraw his guilty plea.

{¶ 3} There is no absolute right to withdraw a guilty plea after conviction, but prior to sentencing, *State v. Xie*, 62 Ohio St.3d 521, 584 N.E.2d 715 (1992), paragraph one of the syllabus. The matter is left to the sound discretion of the trial court judge who is in the better position to evaluate both the motivation of the defendant in pleading guilty and the credibility and weight to be given to the reasons for seeking to withdraw the plea. *Id.* at paragraph two of the syllabus. Therefore, we will not reverse the trial court’s denial of the motion unless the defendant can establish that the trial court abused its discretion. *Id.* at 525. An abuse of discretion standard requires a finding that the trial court committed “more than an error of law or of judgment; it implies that the court’s attitude is unreasonable, arbitrary or unconscionable \* \* \*.” *State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980).

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<sup>1</sup> A type of guilty plea entered pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970)

{¶ 4} Crim.R. 32.1 gives no criteria for determining when withdrawal of a plea is justified. However, the Ohio Supreme Court has held that “a presentence motion to withdraw a guilty plea should be freely and liberally granted.” *Xie* at 527. Appellate courts evaluate the trial court’s decision based upon the following considerations: “(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. Murphy*, 176 Ohio App.3d 345, 2008-Ohio-2382, 891 N.E.2d 1255, ¶ 39 (6th Dist.), citing *State v. Griffin*, 141 Ohio App.3d 551, 554, 752 N.E.2d 310 (7th Dist.2001).

{¶ 5} A change of heart is an insufficient reason to permit withdrawal of the plea. *State v. Locher*, 4th Dist. Scioto No. 11CA3414, 2012-Ohio-787, ¶ 17; *State v. Lawhorn*, 6th Dist. Lucas No. L-08-1153, 2009-Ohio-3216, ¶ 23, citing *State v. Gonzales*, 6th Dist. Wood Nos. WD-06-084 and WD-06-085, 2007-Ohio-3565, ¶ 23 (or a mistaken belief); and *State v. Eversole*, 6th Dist. Erie Nos. E-05-073, E-05-074, E-05-075, E-05-076, 2006-Ohio-3988, ¶ 16 (or a mistaken belief).

{¶ 6} In this case, appellant’s *Alford* plea was accepted by the trial court on the morning trial was set to begin. Appellant was charged with one count of aggravated

burglary, a felony of the first degree, and two counts of felonious assault, both felonies of the second degree. The court accepted the plea and convicted him of the reduced charges.

{¶ 7} Two days later, prior to sentencing, appellant filed a motion to withdraw his guilty plea. Appellant argued that granting the motion would not prejudice the prosecution. He had witnesses to establish that he had been acting in self-defense regarding the felonious assault charge and that he did not trespass on the property of the victim or commit acts of violence while he was present in the victim's apartment. Appellant also asserted that at the time he entered the plea his mental status was so poor that he failed to comprehend the consequences of entering the plea and believed the maximum penalty he could receive would be six months incarceration.

{¶ 8} Following a hearing on the motion to withdraw the plea, the trial court denied the motion and conducted a sentencing hearing. At the hearing on the motion, appellant testified that when he entered the plea, he was full of anxiety because this case had been pending for nine months. He believed that he was told by his attorney that he would not be sentenced to more than 90 days incarceration. He explained that the motion to withdraw the guilty plea indicated that he had thought he could not be sentenced to more than six months incarceration because his attorney must have misunderstood appellant. He later came to realize that the sentence could be significantly longer.

{¶ 9} Appellant also admitted at the hearing that he had been drinking alcohol and using cocaine just prior to trial. Appellant testified that after he entered the plea, and

learned that he could be sentenced to six years imprisonment, his anxiety significantly increased, and he admitted himself to St. Vincent's mental health ward. He further testified that he was diagnosed with depression and anxiety and is taking medication for both. He did not have proof of his medical issues with him at the hearing, but he could obtain the proof.

{¶ 10} However, appellant's presentence report included a statement made by appellant to the presentence interviewer that he entered a guilty plea "because the risk of losing my case was too high. I was facing 21 years in prison if I lost my case." He also told the interviewer that he retrieved a baseball bat from the car to defend himself.

{¶ 11} A criminal investigator on the case testified that he interviewed some of the witnesses who would testify on behalf of the defense regarding appellant's case and consulted all of the evidence that had been disclosed to the defense. The investigator believed that appellant is innocent of some charges and has a meritorious defense of self-defense to others.

{¶ 12} The court found that there was automatic prejudice to the state if appellant were allowed to withdraw his plea because the crime occurred over a year prior to this date and the prosecution would have to secure all of the witnesses that were dismissed because appellant entered a plea just before trial began. The court found that the prior court had conducted a thorough Crim.R. 11 hearing where appellant indicated he understood the nature of his plea and the sentence that could be imposed, appellant had admitted that he met with his attorney at least 20 times prior to entering the plea, and

appellant denied being under the influence of drugs at the time of the plea hearing. While defendant presented the investigator's opinion to support appellant's claim of innocence, the court noted that the investigator's opinion was based only on some of appellant's witnesses and none of the prosecution's witnesses. Furthermore, the court noted that the presentence investigation report included conflicting statements made by appellant that might undermine his self-defense argument. Therefore, the trial court concluded that appellant did not have a reasonable and legitimate basis for withdrawing his plea.

{¶ 13} On appeal, appellate argues that he filed his motion to withdraw his plea two days afterward and before the sentencing hearing, he demonstrated a meritorious defense, and the prosecution did not demonstrate any prejudice from the granting of the motion. Appellant argues that the court's finding that the prosecution would be prejudiced was unsupported by the evidence.

{¶ 14} Upon a review of the record, we find the trial court conducted a thorough hearing on the motion to withdraw and gave full and fair consideration to the motion. The trial court's finding the prosecution could be prejudiced by the withdrawal of the plea was based on the prosecutor's statements that the witnesses might be difficult to locate because of the nature of the case and the lapse of almost a year since the crime occurred. Although appellant testified that he had recently spoken to some of them, there always remains a possibility witnesses will not be located a second time. Furthermore, there was a possibility that the memories of the witnesses would fade over time.

{¶ 15} Other factors also weigh in favor of denying the motion even though it was timely made. Appellant was represented by competent counsel at the time of the plea. The trial court conducted a thorough Crim.R. 11 plea hearing where appellant indicated that he had sufficient time to consult with his attorney and understood the nature of what he was about to do. Although appellant asserts that he was so confused and emotionally upset at the time that he could not understand the potential sentence he faced, there was no indication at the plea hearing that appellant could not follow the judge's conversation. Appellant testified that he had been using alcohol and cocaine after he was indicted but when the judge asked whether he was under the influence at the time of the plea hearing, appellant indicated that he was not. His attorney did not indicate to the court that appellant was having trouble understanding.

{¶ 16} The trial court also properly doubted the credibility of appellant's statement that he believed he would only face 90 days of incarceration by entering a plea. Appellant faced sentencing on two third degree felony convictions. He recalled the judge advising him that he could serve up to 27 years if he proceeded to trial on the indicted charges. Appellant admitted at the plea hearing that he understood that each reduced offense carried "a basic prison term of 9 to 36 months." Appellant signed a written plea agreement which indicated that appellant's maximum sentence could be 72 months. There was no basis for believing that appellant's competent counsel would have told appellant he faced only 90 days of incarceration in a local prison or five years of

probation. We find that the court reasonably concluded that appellant had a change of heart or deliberately postponed the trial with the intent to affect its outcome.

{¶ 17} The trial court also properly questioned the weight to be given to appellant's witness who opined that appellant had a meritorious defense. His criminal investigator only interviewed some of appellant's witnesses before making his conclusions and none of the prosecution's witnesses.

{¶ 18} Therefore, we find that appellant failed to demonstrate that the trial court abused its discretion by denying the motion to withdraw the plea. Appellant's first assignment of error is found not well-taken.

{¶ 19} In his second assignment of error, appellant argues that the trial court erred by ordering his sentences to be served consecutively when the burglary and attempted felonious assault arose out of the same events and appellant did not have a prior felony record.

{¶ 20} As an appellate court, we review felony sentences pursuant to R.C. 2953.08(G)(2). We may only increase, modify, or vacate and remand a judgment if we clearly and convincingly find that: (1) "the record does not support the sentencing court's findings under division \* \* \* (C)(4) of section 2929.14, \* \* \*," or (2) "the sentence is otherwise contrary to law." R.C. 2953.08(G)(2).

{¶ 21} R.C. 2929.14(C)(4) governs consecutive sentences and provides that:

If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison

terms consecutively if the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and if the court also finds any of the following:

(a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.

(b) At least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender's conduct.

(c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender

{¶ 22} The trial court found the offenses involved in this case were extremely violent and appellant took no responsibility for his actions and continues to see himself as the victim. While appellant did not have any prior felony offenses, he was a multistate offender with 13 misdemeanor convictions, several of which were assault related. The

court specifically found that “a consecutive sentence was necessary to protect the public from future crime or to punish [appellant] and were not disproportionate to the seriousness of [appellant’s] conduct of the danger [appellant] posed.” The court further found that “the harm caused was so great or unusual that no single prison term for any of these offenses committed as part of any course of conduct adequately reflects the seriousness of [appellant’s] conduct.”

{¶ 23} Upon a review of the record, we find that the trial court engaged in the appropriate analysis and made the necessary findings which permitted the additional requirement that the sentences be served consecutively. Those findings were supported by clear and convincing evidence and the imposition of consecutive sentences was not contrary to law. Therefore, appellant’s second assignment of error is found not well-taken.

{¶ 24} Having found that the trial court did not commit error prejudicial to appellant, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the court 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.

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JUDGE

Arlene Singer, J.

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JUDGE

Stephen A. Yarbrough, P. J.  
CONCUR.

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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>.