

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

State of Ohio

Court of Appeals No. L-13-1280

Appellee

Trial Court No. CR0201302603

v.

Scottie Greer

DECISION AND JUDGMENT

Appellant

Decided: April 3, 2015

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Kathryn J. T. Sandretto, Assistant Prosecuting Attorney,
for appellee.

Kent Sobran, for appellant.

* * * * *

JENSEN, J.

{¶ 1} Defendant-appellant, Scottie Greer, appeals the December 18, 2013 judgment of the Lucas County Court of Common Pleas denying his motion to withdraw his plea of guilty under Crim.R. 32.1. For the reasons that follow, we affirm the trial court's decision.

I. Background

{¶ 2} On September 19, 2013, Greer was indicted on three counts of domestic violence, all of which were felonies of the fourth degree. These charges followed a September 5, 2013 incident in which Greer allegedly assaulted his pregnant girlfriend and her two minor children.

{¶ 3} On November 21, 2013, Greer entered a plea of guilty under *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970), to one count of domestic violence, a violation of R.C. 2919.25(A) and (D)(3). The other two counts were to be dismissed at the time of sentencing.

{¶ 4} At the plea hearing, the court engaged in an extensive colloquy with Greer during which it advised him of the constitutional rights he was waiving by entering a plea. Greer demonstrated that he understood those rights. The court accepted Greer's plea, finding that it was entered knowingly, voluntarily, and intelligently.

{¶ 5} On December 12, 2013, Greer filed a pro se motion to withdraw his plea, both orally and in writing. Counsel filed a motion on his behalf on December 13, 2013. The trial court held a hearing on that motion on December 16, 2013, at which Greer testified. Following arguments from both parties, the court denied the motion and proceeded to sentencing. It sentenced Greer to a 17-month prison term, three years of postrelease control, and court costs.

{¶ 6} Greer appealed the court's denial of his motion to withdraw his plea and assigns the following error for our review:

THE TRIAL COURT ERRED WHEN IT DENIED APPELLANT’S
MOTION TO WITHDRAW HIS PLEA BECAUSE IT WAS CONTRARY
APPLICABLE LAW [sic].

II. Law and Analysis

{¶ 7} We review a trial court’s denial of a motion to withdraw a guilty plea under an abuse-of-discretion standard. *State v. Xie*, 62 Ohio St.3d 521, 527, 584 N.E.2d 715 (1992). Absent an abuse of discretion, the trial court’s decision must be affirmed. *Id.* An abuse of discretion is more than an error of judgment. It suggests that the trial court’s ruling was “unreasonable, arbitrary or unconscionable.” *Id.*

{¶ 8} When a defendant moves to withdraw a guilty plea under Crim.R. 32.1, the trial court must conduct a hearing to determine whether there is a reasonable and legitimate basis for allowing the defendant to withdraw his plea. In making that determination, there are a number of factors that the trial court should consider:

(1) whether the state would 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 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 crime. *State v. Richey*, 6th Dist.

Sandusky No. S-09-028, 2011-Ohio-280, ¶ 42, citing *State v. Fish*, 104

Ohio App.3d 236, 240, 661 N.E.2d 788 (1st Dist.1995).

In determining whether a trial court abused its discretion, we should review the trial court's weighing of the *Fish* factors. *State v. Posey*, 6th Dist. Ottawa No. OT-12-028, 2014-Ohio-1994, ¶ 8.

{¶ 9} As Greer correctly observes, a presentence motion to withdraw a guilty plea should be freely and liberally granted. *Xie* at 527, citing *State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980). Having said this, a defendant does not have an absolute right to withdraw a plea prior to sentencing. *Id.* A defendant may not withdraw his plea merely because he has a change of heart or a mistaken belief about pleading guilty. *Posey* at ¶ 9.

{¶ 10} In support of his motion to withdraw his plea, Greer asserted in the trial court that the state's case against him was not strong enough to support a conviction. He testified at the December 16, 2013 motion hearing that he entered his plea because he was afraid due to the length of the potential 54-month prison sentence he was facing. He indicated that he was no longer afraid and wanted to proceed to trial. The state countered that Greer entered his plea voluntarily and intelligently, no new evidence had come to light, his motion was premised on "buyer's remorse," and there was no legitimate basis for permitting him to withdraw his plea.

{¶ 11} The trial court denied Greer's motion. It found that Greer was represented by "extremely competent" counsel and was given a full and proper Crim.R. 11 hearing at

which it clearly explained to Greer the constitutional rights he was waiving by entering a plea. While it noted that Greer had consistently professed his innocence, the trial court explained that bald assertions of innocence do not provide a legitimate and reasonable basis for withdrawing a plea. The trial court ultimately agreed with the state that this was a case of “buyer’s remorse.”

{¶ 12} Greer now argues that the trial court failed to give full and fair consideration to his timely motion. While he concedes that he was given full and complete hearings and that he understood the nature of the charges and potential sentence when he entered his plea, he emphasizes that he has always maintained his innocence. He argues that the trial court “did not take the issue of his [*Alford*] plea into consideration when it decided to deny the motion.” Greer also argues that the state would have suffered no prejudice had the court granted the motion.

{¶ 13} The state responds that Greer was afforded a full Crim.R. 11 hearing at which the court explained, in detail, the nature and effect of an *Alford* plea. The state recognizes that Greer has always denied guilt, but observes, as did the trial court, that this was why Greer entered an *Alford* plea. The state insists that the trial court conducted a full hearing on Greer’s motion, and also claims that it would, in fact, suffer prejudice by the withdrawal of Greer’s plea because it would be forced to track down the two juvenile victims who may have a difficult time remembering an event from September 2013, and who would be traumatized by having to face “the nightmare” of testifying in court. The

state concludes that these factors support the trial court's decision and that the decision was not an abuse of discretion.

{¶ 14} We agree with the state that the trial court did not abuse its discretion in denying Greer's motion. The trial court conducted a full Crim.R. 11 hearing before accepting Greer's plea. At that hearing, Greer was represented by experienced, competent counsel who advised him and answered his questions. The court fully explained the origin, meaning, and effect of entering an *Alford* plea, and engaged in a thorough colloquy to ensure that Greer's plea was completely voluntary and made with a full understanding of the rights he was waiving and the potential sentence he was facing.

{¶ 15} In addition to the thorough plea hearing, the trial court also conducted an extensive hearing on Greer's motion. He was permitted to testify and both parties were permitted to argue. Contrary to Greer's assertion that the trial court did not consider the nature of his *Alford* plea, the record demonstrates that the trial court considered the nature of his plea in great depth. Greer has pointed to no new evidence or new defense; he, like the trial court observed, has made only bald assertions of innocence. We agree with the trial court that Greer's motion was premised on a mere change of heart. Accordingly, we find that the court properly denied Greer's motion to withdraw his guilty plea and we find his sole assignment of error not well-taken.

IV. Conclusion

{¶ 16} We find Greer's sole assignment of error not well-taken. We affirm the December 18, 2013 judgment of the Lucas County Court of Common Pleas. Greer is ordered to pay the costs of this appeal under 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.

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, P.J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

<p>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.</p>
