

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

State of Ohio

Court of Appeals No. L-14-1038

Appellee

Trial Court No. CR201302120

v.

Larry Wymer

DECISION AND JUDGMENT

Appellant

Decided: February 27, 2015

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Louis E. Kountouris, Assistant Prosecuting Attorney, for appellee.

Bertrand R. Puligandla and Vijay K. Puligandla, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an accelerated appeal from a judgment of the Lucas County Court of Common Pleas that denied appellant's presentence motion to withdraw his plea entered pursuant to *North Carolina v. Alford*. For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} The record reflects that in February 2009, appellant was interviewed by a detective with the Sylvania, Ohio, police department. At that time, appellant denied allegations of sexual abuse of the victim in this matter. In January 2013, however, appellant contacted the same detective and agreed to discuss the allegations again. At that time, appellant admitted to “grabbing and groping” the victim’s genitals and touching her vaginal area with his hands. He also admitted that he had attempted sexual conduct.

{¶ 3} On July 11, 2013, appellant was indicted on two counts of rape in violation of R.C. 2907.02(A)(1)(b) and (B) which alleged sexual conduct with the victim when she was between the ages of five and nine years. On July 16, 2013, appellant entered a plea of not guilty. He withdrew the guilty plea on September 10, 2013, and with respect to the first count of the indictment entered an *Alford* plea to the lesser included offense of gross sexual imposition in violation of R.C. 2907.05(A)(4). The second count of the indictment was dismissed at sentencing.

{¶ 4} On October 22, 2013, appellant filed a motion to withdraw his *Alford* plea. In support of his motion, appellant asserted that: his counsel admitted to him that he had conducted little or no investigation; counsel never reviewed videotapes of appellant’s interviews with the detective prior to entering the plea; appellant had attempted to discharge counsel on the day he pled, but counsel “refused to be fired”; counsel had coerced him into entering the plea, and he was innocent of any crimes.

{¶ 5} Two weeks after the motion was filed, appellant's original counsel was granted leave to withdraw.

{¶ 6} A hearing on appellant's motion was held on February 4, 2014. Appellant testified that he did not enter his plea voluntarily. He stated he was dissatisfied with his counsel's representation but that counsel "would not allow me to fire him." As to having told the trial court at his plea hearing that he had signed the plea form voluntarily, appellant testified to the contrary that his attorney gave him no choice but to enter the *Alford* plea. Appellant stated that he did not understand the nature of the charges against him or the associated penalties until the judge reviewed them after he had signed the plea form. Appellant further testified that he gave a false statement to the detective when he admitted to one count of gross sexual imposition in 2013. Appellant also admitted that after the initial investigation of the charges in this case in 2009, he attended a police academy and became an officer with the Waterville Township Police Department in August 2012. He lost that job after six days, however, when his employer discovered that he was the subject of a rape investigation.

{¶ 7} Appellant stressed that he was under pressure when he signed the plea agreement but admitted that he did not tell the judge at the plea hearing that he had attempted to fire his attorney. At that point, the judge reminded appellant that he had asked appellant if he was satisfied with his counsel's representation. Appellant told the judge that he recalled answering "yes." Appellant said he had "falsely stat[ed]" to the detective that he had sexual contact with the victim. Appellant further admitted to the

judge that he had told the court psychologist that he had sexual contact with the victim; then, when the judge asked appellant if his statement about engaging in sexual activity with the victim was true, he responded that it was. Appellant told the judge that the sexual activity with the victim occurred when appellant was between the ages of eight and sixteen.

{¶ 8} At the conclusion of the hearing, the trial court denied the motion. In so doing, the trial court found that: the competency of appellant's counsel when he entered his plea was not in question; at the plea hearing, the trial court made a finding that appellant knowingly, intelligently and voluntarily waived his rights pursuant to Rule 11; appellant had stated he was satisfied with counsel's representation; the motion was made within a reasonable time, and appellant knew the nature of the charges, the plea agreement and the possible sentencing options when he entered his plea. The trial court concluded that it appeared appellant had developed "buyer's remorse" after entering his plea and denied the motion.

{¶ 9} Appellant was sentenced to 18 months imprisonment and was classified as a Tier II sex offender.

{¶ 10} Appellant sets forth the following as his sole assignment of error:

A pre-sentence motion to withdraw a guilty plea should be freely and liberally granted when it has a reasonable and legitimate basis. In this case, such a basis for withdrawal was established because five of the nine relevant factors – (1), (5), (6), (7) and (9) – weigh in favor of Wymer.

Also, the trial court appears to have adjudged Wymer's guilt in ruling on the motion. Did the trial court abuse its discretion when it overruled the motion?

{¶ 11} Generally, a Crim.R. 32.1 presentence motion to withdraw a guilty plea is to be freely and liberally granted, although there is no absolute right to withdraw a plea prior to sentencing. *State v. Xie*, 62 Ohio St.3d 521, 584 N.E.2d 715 (1992), paragraph one of the syllabus. In *Xie*, the Supreme Court of Ohio directed that a trial court conduct a hearing on such a motion "to determine whether there is a reasonable and legitimate basis for the withdrawal of the plea." *Id.* A trial court's decision granting or denying a presentence motion to withdraw a guilty plea is within the court's sound discretion and will not be reversed on appeal absent an abuse of that discretion. *Id.* at paragraph two of the syllabus. The term "abuse of discretion" implies that the trial court's attitude in reaching its decision was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 450 N.E.2d 1140 (1983).

{¶ 12} On appeal, appellant asserts that the state would not be prejudiced if the plea were vacated and that the motion was made within a reasonable time. He further argues that the trial court did not give full and fair consideration to the motion. He also asserts that his motion set forth specific reasons for withdrawing the plea, in particular that he was perhaps not guilty and that his former counsel coerced him to plead.

{¶ 13} The record supports appellant's claim and the trial court's finding that the motion was filed within a reasonable time. As to whether the prosecution would be

prejudiced if the plea were vacated, that matter is one best left to the trial court's discretion, as the court had the benefit of presiding over numerous proceedings and reviewing the complete record.

{¶ 14} This court has reviewed the trial court's record in its entirety. Upon consideration thereof, including the transcripts of the plea hearing and the motion hearing, we are unable to find that the trial court's decision to deny the motion to vacate the plea was unreasonable, arbitrary or unconscionable. The trial court handled the Crim.R. 11 hearing meticulously and thoroughly, as is documented in the transcript which reveals appellant's statements indicating that he was entering the plea knowingly and voluntarily. Appellant clearly was granted a full Crim.R. 11 hearing. Further, there is every indication that the trial court held a full hearing on the motion to withdraw the plea. Finally, we find that appellant did not demonstrate to the trial court that he was perhaps not guilty or had a complete defense to the crime, as evidenced by his graphic admission in January 2013 that he had sexual contact with the victim. *See, e.g., State v. Cherry*, 6th Dist. Erie No. E-10-045, 2013-Ohio-2596; *State v. Fish*, 104 Ohio App.3d 236, 661 N.E.2d 788 (1st Dist.1995).

{¶ 15} For the foregoing reasons, this court finds that the trial court did not abuse its discretion in denying appellant's motion to withdraw his *Alford* plea. Accordingly, appellant's sole assignment of error is not well-taken.

{¶ 16} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. Costs of this appeal are assessed to appellant 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, J.

JUDGE

Stephen A. Yarbrough, P.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:
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