

[Cite as *State v. Duvall*, 2004-Ohio-640.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 83107

STATE OF OHIO	:	
	:	JOURNAL ENTRY
Plaintiff-Appellee	:	
	:	AND
vs.	:	
	:	OPINION
FRANK DUVALL	:	
	:	
Defendant-Appellant	:	
	:	
	:	
DATE OF ANNOUNCEMENT OF DECISION	:	<u>FEBRUARY 12, 2004</u>
	:	
CHARACTER OF PROCEEDINGS	:	Criminal appeal from
	:	Common Pleas Court
	:	Case No. CR-398606
	:	
JUDGMENT	:	Reversed and Remanded.
	:	
DATE OF JOURNALIZATION	:	

APPEARANCES:

For plaintiff-appellee:	WILLIAM D. MASON, ESQ. Cuyahoga County Prosecutor The Justice Center, 9th Floor 1200 Ontario Street Cleveland, Ohio 44113
For defendant-appellant:	ROBERT L. TOBIK, ESQ. Cuyahoga County Public Defender BY: JOHN T. MARTIN, ESQ. Assistant Public Defender 1200 West Third Street N.W. 100 Lakeside Place Cleveland, Ohio 44113

FRANK D. CELEBREZZE, JR., J.

{¶1} The appellant, Frank Duvall, appeals the ruling of the Cuyahoga County Court of Common Pleas, Criminal Division, which denied his post-sentence motion to withdraw his guilty plea without first holding an evidentiary hearing. The facts of this case are not in dispute; therefore, no exposition is necessary. For the reasons set forth below, we reverse the ruling of the trial court.

{¶2} The appellant presents the following assignment of error for review.

{¶3} "THE TRIAL COURT DENIED MR. DUVALL THE RIGHT TO TRIAL AND THE RIGHT TO DUE PROCESS OF LAW AS GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I OF THE OHIO CONSTITUTION, WHEN IT DENIED HIS MOTION TO WITHDRAW HIS GUILTY PLEA WITHOUT EVEN GIVING HIM THE OPPORTUNITY TO PRESENT EVIDENCE IN SUPPORT OF THE MOTION."

{¶4} Having considered the entire record on appeal, we are of the opinion that the court abused its discretion by refusing to conduct a hearing on the appellant's Crim.R. 32.1 post-sentence motion to withdraw his guilty plea on the grounds of ineffective assistance of counsel for failing to file a motion to dismiss on speedy trial grounds. Because the record does not contain any evidence of a valid parole holder, which might have tolled the speedy trial time against the

appellant, we find sufficient grounds exist to order the court to conduct a hearing that gives the appellant the chance to argue his ineffective assistance of counsel claim and permits the State an opportunity to offer whatever evidence it might have to refute the speedy trial argument.

{¶5} We stress that our mandate is simply that the court conduct a hearing under Crim.R. 32.1; the final decision to grant or deny the motion to withdraw the guilty plea is within the trial court's sole discretion. The appellant's assignment of error is sustained.

{¶6} Judgment reversed and remanded.

{¶7} This cause is reversed and remanded to the lower court for further proceedings consistent with this opinion.

It is, therefore, considered that said appellant recover of said appellee costs herein.

MICHAEL J. CORRIGAN, A.J., and PATRICIA A. BLACKMON, J.,  
CONCUR.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate

pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR.  
JUDGE

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).