

[Cite as *State v. Hardy*, 2005-Ohio-114.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 84701

STATE OF OHIO	:	
	:	ACCELERATED DOCKET
Plaintiff-Appellee	:	
	:	JOURNAL ENTRY
-vs-	:	
	:	AND
ALONZO HARDY	:	
	:	OPINION
Defendant-Appellant	:	

Date of Announcement of Decision:	JANUARY 13, 2005
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Character of Proceeding:	Criminal appeal from Court of Common Pleas Case No. CR-313286
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Judgment:	Affirmed
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Date of Journalization:

Appearances:

For Plaintiff-Appellee:	WILLIAM D. MASON Cuyahoga County Prosecutor KERRY A. SOWUL, Assistant Prosecuting Attorney 1200 Ontario Street Cleveland, Ohio 44113
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For Defendant-Appellant:	ALONZO HARDY, PRO SE Inmate No. A-303-349
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2500 S. Avon-Belden Road
Grafton, Ohio 44044

JAMES J. SWEENEY, J.:

{¶ 1} This appeal is before the Court on the accelerated docket pursuant to App.R. 11.1 and Loc. App.R. 11.1.

{¶ 2} Defendant-appellant Alonzo Hardy ("defendant") appeals pro se from the trial court's judgment that denied his post-sentence motion to withdraw his guilty plea. For the reasons that follow, we affirm.

{¶ 3} Defendant was indicted in August 1994 for ten counts of felonious sexual penetration, two counts of gross sexual imposition, and one count of rape. In February 1995, defendant pled guilty to four counts of attempted felonious assault, one count of gross sexual imposition, and one count of attempted rape.

The court ordered defendant to serve a prison term of eight to fifteen years. Later, the trial court granted defendant's motion for super shock probation, suspended his jail sentence, and placed him on probation with conditions. In September 1998, defendant violated his probation but the court continued probation. On September 25, 2002, the trial court determined that defendant had again violated his probation. Defendant's probation was terminated and his original prison sentence was ordered into execution. He attempted to file a delayed appeal on November 25, 2003, which this court denied.

{¶ 4} In March 2004, defendant filed a motion to withdraw his guilty plea pursuant to Crim.R. 32.1. The trial court denied this motion on May 7, 2004. It is from this ruling that defendant now appeals and raises three assignments of error for our review.

{¶ 5} "I. The trial court erred and breached contract by revoking Hardy's super shock probation when the court lacked jurisdiction over Hardy.

{¶ 6} "II. The trial court erred, breached contract and violated Hardy's due process and confrontation rights under Sixth and Fourteenth Amendments to the United States Constitution and the Ohio Constitution by failing to conform to the mandates of Ohio Rules of Criminal Procedure 32.2 and *Gagnon v. Scarpelli*, (1973), 411. U.S. 788.

{¶ 7} "III. Hardy was denied effective assistance of counsel in violation of the Sixth and Fourteenth Amendments to United States Constitution and Article I, Section 10 of the Ohio Constitution."

{¶ 8} We have reviewed the record and determined that the trial court did not err in denying defendant's motion to withdraw his guilty plea. Defendant's errors and argument concern the trial court's decision to revoke his probation on September 25, 2002 and do not address his plea.¹ Defendant was denied leave to file a delayed appeal from the September 25, 2002 order.

¹This is highlighted by defendant's reliance upon *State v. Williams* (1988), 43 Ohio App.3d 184, which involved an appeal from a trial court's decision to revoke Williams'

{¶ 9} The appellate rules preclude defendant from utilizing a subsequent order to indirectly and untimely appeal a prior order (which was never directly appealed). App.R. 4(A); *State v. Gray* (May 24, 2001), Cuyahoga App. No. 78467; *State v. Douglas* (May 17, 2001), Cuyahoga App. No. 78692; *State v. Kavlich* (June 15, 2000), Cuyahoga App. No. 77217 (effectiveness of counsel at plea hearing should have been raised in direct appeal and not on appeal of denial of post-sentence motion to withdraw guilty plea); *City of Shaker Heights v. Elder* (July 1, 1999), Cuyahoga App. No. 74243 (“appellant may not use the court’s denial of his motion to withdraw his plea to reopen prior proceedings”); *State v. Church* (Nov. 2, 1995), Cuyahoga App. No. 68590 (holding that “any error dealing with the competency of counsel should have been raised by direct appeal” and not through an order issued subsequent to sentencing).

{¶ 10} Assignments of Error I, II, and III are overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Court of Common Pleas to carry this judgment into

probation following a probation violation hearing. In any case, defendant’s reliance on *Williams* is misplaced as the Ohio Supreme Court overruled it in *In re Townsend* (1990), 51 Ohio St.3d 136.

execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

PATRICIA A. BLACKMON, P.J., and

COLLEEN CONWAY COONEY, J., CONCUR.

JAMES J. SWEENEY
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. 112, Section 2(A)(1).