

[Cite as *State v. J.G.*, 2009-Ohio-5495.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. **92765**

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**STATE OF OHIO**

PLAINTIFF-APPELLANT

vs.

**J. G.**

DEFENDANT-APPELLEE

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**JUDGMENT:  
AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-183454

**BEFORE:** Jones, J., Rocco, P.J., and Sweeney, J.

**RELEASED:** October 15, 2009

**JOURNALIZED:**  
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**N.B.** This entry is an announcement of the court's decision. See App.R. 22(B) 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(C) 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(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

LARRY A. JONES, J.:

{¶ 1} Plaintiff-appellant, the state of Ohio (“the State”), appeals the trial court’s decision to unseal the arrest record of defendant-appellee, “J.G.,” and grant her motion to withdraw her guilty plea. For the following reasons, we affirm the judgment of the trial court.

{¶ 2} In 1984, J.G. pled guilty to aggravated assault. In 1997, J.G. moved to have her arrest record sealed and her conviction expunged. The trial court granted the motion. In 2008, J.G. filed a motion to “vacate plea,” asking the trial court to unseal her records and vacate her 1984 guilty plea so that she could keep her job as a maintenance worker at a local school district. In J.G.’s motion, she stated that she should be allowed to withdraw her 1984 plea because a recent change in Ohio law mandated that all non-licensed school employees must have both an Ohio Bureau of Criminal Investigation and a Federal Bureau of Investigation background check and prohibits continued employment of persons convicted of several different offenses, including aggravated assault. See R.C. 3319.39.

{¶ 3} J.G. filed her motion on December 2, 2008. It was not until December 29, 2008, that the State asked for an extension of time to file its response to J.G.’s brief, citing an “overwhelming caseload” as reason why the extension was needed. On January 9, 2009, the trial court issued a journal entry stating J.G.’s motion was unopposed, ordering her records unsealed, and vacating her plea of guilt and conviction.

{¶ 4} The State appeals, raising one assignment of error for our review, in which it argues that the trial court erred in granting J.G.'s post-sentence motion to withdraw her guilty plea in the absence of manifest injustice.

{¶ 5} Crim.R. 32.1 states that “[a] motion to withdraw a plea of guilty or no contest may be made only before sentence is imposed; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his or her plea.”

{¶ 6} The decision to grant a motion to withdraw a guilty plea lies within the sound discretion of the trial court. *State v. Xie* (1992), 62 Ohio St.3d 521, 526, 584 N.E.2d 715. But a defendant moving for a post-sentence withdrawal of a guilty plea has the burden of establishing the existence of manifest injustice. *State v. Smith* (1977), 49 Ohio St.2d 261, 361 N.E.2d 1324, paragraph one of the syllabus.

{¶ 7} Pursuant to Loc.R. 11(C) of the Court of Common Pleas of Cuyahoga County, General Division, the nonmoving party “shall” serve and file within seven days “a brief written statement of reasons in opposition to the motion and a list of citations of authorities which are relied upon.” Crim.R. 45(E) provides for an extra three days when service of a motion is by mail, as it was in this case. Therefore, by our calculations, the State had until December 12, 2008, to file its brief in opposition or a motion for an extension of time. The State did not ask for an extension until December 29

and did not file its motion in opposition until January 14, 2009. Thus, we cannot find that the trial court abused its discretion in finding that the motion was unopposed by the State and granting J.G.'s motion to unseal her records and withdraw her guilty plea.

{¶ 8} Therefore, the assignment of error is overruled.

{¶ 9} Accordingly, we affirm the decision of the trial court.

It is ordered that appellee recover of appellant 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 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.

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LARRY A. JONES, JUDGE

KENNETH A. ROCCO, P.J., and  
JAMES J. SWEENEY, J., CONCUR