

[Cite as *State v. Weakley*, 2010-Ohio-2464.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 93282**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**GEORGE WEAKLEY**

DEFENDANT-APPELLANT

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**JUDGMENT:  
AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case Nos. CR-504666, CR-511574, and  
CR-516933

**BEFORE:** Stewart, J., Kilbane, P.J., and Blackmon, J.

**RELEASED:** June 3, 2010

**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), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten 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. 2.2(A)(1).

MELODY J. STEWART, J.:

{¶ 1} Defendant-appellant, George Weakley, appeals the trial court's denial of his motion to withdraw his guilty pleas. Appellant argues that the trial court abused its discretion when it denied his motion without giving full and fair consideration to the underlying circumstances that led to the motion.

For the reasons stated below, we affirm.

{¶ 2} Appellant was indicted in three separate criminal cases. In case number CR-504666, appellant was charged with drug trafficking and tampering with evidence. In case number CR-511574, appellant was charged with escape. In case number CR-516933, appellant was charged with three counts of aggravated robbery, two counts of kidnapping, two counts of felonious assault, aggravated burglary, two counts of carrying a concealed weapon, and two counts of having a weapon while under disability.

The robbery, kidnapping, assault, and burglary charges carried firearm specifications. Appellant entered pleas of not guilty and was appointed counsel. The cases proceeded to discovery and other pretrial matters. A trial schedule was set with each of the cases to be tried serially, beginning with CR-516933.

{¶ 3} One week before the first jury trial was to commence, appellant filed a pro se motion to disqualify appointed counsel. Before commencing trial, the court held a hearing on appellant's motion. After listening to

appellant's arguments and questioning defense counsel, the court denied the motion. The trial court also heard and denied appellant's motion to suppress identification evidence. Appellant elected to go to trial.

{¶ 4} The trial commenced on March 4, 2009. The state's first witness, Najja Johnson, testified that on August 27, 2008, he and a friend, Jarrell Erwin, went to a store near East 28th Street and Cedar Avenue in Cleveland to cash their paychecks. When they came out of the store and got into Johnson's car, an unknown male walked up to the car and pointed a gun at Erwin's head and demanded that they give him everything they had. As the assailant pulled Erwin out of the car, appellant rode up to the driver's side of the car on a bicycle. He pointed a knife at Johnson, told him to get out of the car, and ordered Johnson to give him everything he had. Johnson gave appellant some of the cash from his pocket. Appellant reached into Johnson's pocket and grabbed the rest of the cash. Appellant then demanded Johnson's earrings. While Johnson was removing the first earring, appellant told the other assailant, "He's taking all day. Shoot him." The unknown male shot Johnson in the ankle.

{¶ 5} The entire incident was captured on the store's video camera and played for the jury. Johnson identified appellant in court as the second assailant, the one on the bicycle. The first assailant was not identified.

{¶ 6} The next morning, appellant informed the court that he had agreed to plead guilty to reduced charges. Following a plea hearing, appellant pled guilty to the indictments in CR-504666 and CR-511574. In CR-516933, appellant entered guilty pleas to four of the 12 charges in the indictment: one count each of aggravated robbery, felonious assault, aggravated burglary, and having a weapon while under disability. The aggravated robbery, felonious assault, and aggravated burglary counts carried three-year firearm specifications. Appellant asked the court to delay sentencing so he could spend some time with his family prior to incarceration.

The court granted the request and scheduled sentencing for three weeks later.

{¶ 7} On April 16, 2009, the trial court held a hearing on appellant's oral motion to withdraw his pleas, made on March 26, 2009. The court also heard appellant's motion to disqualify counsel, filed March 31, 2009. Appellant argued that trial counsel neglected his legal problems, was abusive and disrespectful toward him, lied to him about how many years he was going to receive at sentencing, and pressured him into accepting the plea agreement. He argued that he was not guilty of aggravated burglary and that his counsel told him that charge would be dismissed.

{¶ 8} Trial counsel informed the court that prior to trial, he went over all of the anticipated evidence and advised appellant that a plea agreement

might be an appropriate way to resolve appellant's cases. Counsel denied coercing appellant into making a plea, being abusive toward appellant, or acting in less than a professional manner.

{¶ 9} The trial court denied both motions and proceeded to sentence appellant to an aggregate term of 11 years on all three cases. The court imposed court costs and costs of supervision, but did not order restitution, as the state presented no evidence on that issue.

{¶ 10} Appellant timely appeals raising as a single error for review that the court committed reversible error when it denied his motion to withdraw his pleas made prior to sentencing.

{¶ 11} Although a presentence motion to withdraw a guilty plea should be freely and liberally granted, it is well established that “[a] defendant does not have an absolute right to withdraw a guilty plea prior to sentencing. A trial court must conduct a hearing to determine whether there is a reasonable and legitimate basis for the withdrawal of the plea. The decision to grant or deny a presentence motion to withdraw a guilty plea is within the sound discretion of the trial court.” *State v. Xie* (1992), 62 Ohio St.3d 521, 584 N.E.2d 715, at paragraphs one and two of the syllabus. A mere change of heart is insufficient grounds for the withdrawal of a guilty plea prior to sentencing. *State v. Benjamin*, 8th Dist. No. 85071, 2005-Ohio-2322.

{¶ 12} In determining whether the trial court abused its discretion by denying a defendant's motion to withdraw a plea, we consider the following factors: (1) whether the accused was represented by highly competent counsel; (2) whether the accused was afforded a full hearing pursuant to Crim.R. 11 before he entered the plea; (3) whether, after the motion to withdraw was filed, the accused was given a complete and impartial hearing on the motion; and (4) whether the record reveals that the court gave full and fair consideration to the plea withdrawal request. *State v. Peterseim* (1980), 68 Ohio App.2d 211, 428 N.E.2d 863, at paragraph three of the syllabus.

{¶ 13} The first element in *Peterseim* requires that highly competent counsel represented the defendant. Appellant argues that he was extremely dissatisfied with appointed counsel and twice moved to have him removed. The Ohio Supreme Court has held that before a defendant is entitled to discharge appointed counsel, "the defendant must show 'a breakdown in the attorney-client relationship of such magnitude as to jeopardize the defendant's right to effective assistance of counsel.'" *State v. Coleman* (1988), 37 Ohio St.3d 286, 292, 525 N.E.2d 792, quoting *People v. Robles* (1970), 2 Cal.3d 205, 215, 466 P.2d 710. Appellant concedes that there is nothing in the record to support a claim of ineffective assistance of counsel. Additionally, the trial court observed counsel's behavior throughout the proceeding and found that defense counsel zealously defended appellant in a

case where the evidence weighed heavily against him. Therefore, the first element of *Peterseim* is satisfied.

{¶ 14} We find no merit to appellant's argument that, by refusing to grant appellant's request to remove appointed counsel, the trial court "forced Appellant to ultimately plead the case, because of his lack of trust in trial counsel." Counsel did not force appellant to plead. In fact, counsel acquiesced to appellant's request to proceed to trial against counsel's advice. It was the state's evidence presented in the first day of trial that led to appellant changing his plea to guilty. Only after the victim identified appellant as the man who robbed him at knifepoint and ordered the gunman to shoot him, and the jury saw the videotape of the robbery and assault, did appellant decide to change his plea.

{¶ 15} We also find that the trial court complied with *Peterseim's* second element. The record demonstrates that the court conducted a full hearing pursuant to Crim.R. 11 before accepting appellant's plea. During the plea hearing, the court personally addressed appellant and informed him of the rights he would be waiving by making a plea. The court explained the nature of each of the charges against him and stated the elements of each offense. The court fully explained the maximum sentence for each offense, and informed appellant that he faced a possible sentence of 50 years, of which six years were mandatory on the firearm specifications and 44 years possible



on the felony offenses. The court also explained the other consequences of his plea, including postrelease control, and the possibility of financial sanctions including fines and restitution.

{¶ 16} After each individual explanation, the court asked appellant if he understood and appellant said he did. When asked if he was satisfied with his appointed counsel's work, appellant replied: "It's all right." When asked if any threats or promises were made to get him to change his plea, appellant told the court that he was promised that he would be sentenced to 11 years. The judge explained that the court had not made any promises regarding sentencing and that only the court can determine the sentence to be imposed.

Appellant was advised that before he pleaded guilty he needed to understand that he could be sentenced to anywhere from the minimum to the maximum. Appellant concedes that the trial court complied with Crim.R. 11.

{¶ 17} The third and fourth elements of the test requires the court grant appellant a full and impartial hearing on his motion to withdraw his pleas and give full and fair consideration to his request. Appellant concedes that the court held a full hearing on his motion to withdraw his pleas; therefore, the third element is satisfied. However, appellant argues that the court's failure to grant his request for new counsel demonstrates that the court did not give full and fair consideration to his request to withdraw the pleas. We disagree. The court considered appellant's testimony at the hearing on the

motions to disqualify counsel and to withdraw the plea, and the Crim.R. 11 plea colloquy between the trial court and appellant. The court noted that appellant's reasons for withdrawing his plea were based upon a post-plea conversation he had with counsel and did not affect the voluntary nature of the plea.

{¶ 18} After consideration of the *Peterseim* factors, we find that the trial court did not abuse its discretion when it denied appellant's motion to withdraw his pleas. The record reflects that appellant's pleas were knowingly, intelligently, and voluntarily made. Accordingly, appellant's single assignment of error is 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 Cuyahoga County Court of Common Pleas to carry this judgment into 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.

MELODY J. STEWART, JUDGE

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MARY EILEEN KILBANE, P.J., and  
PATRICIA ANN BLACKMON, J., CONCUR