

[Cite as *State v. Pizarro*, 2010-Ohio-4007.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93694

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MIGUEL PIZARRO

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-500632

BEFORE: Rocco, P.J., Blackmon, J., and Sweeney, J.

RELEASED AND JOURNALIZED: August 26, 2010

ATTORNEY FOR APPELLANT

Britta M. Barthol
P.O. Box 218
Northfield, Ohio 44067

Miguel Pizzaro, Pro Se
Mansfield Correctional Institution
P.O. Box 788
1150 North Main Street
Mansfield, Ohio 44901

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

BY: Mary McGrath
Assistant County Prosecutor
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

KENNETH A. ROCCO, P.J.:

{¶ 1} Defendant-appellant Miguel Pizarro appeals from a common pleas court decision denying his motion to withdraw his guilty plea. He contends that the court erred by failing to conduct an evidentiary hearing on his motion, and that the court erred by denying his motion because he did not receive the effective assistance of counsel at the time of his plea. We find that

the common pleas court did not abuse its discretion by denying his motion to withdraw his guilty plea. Therefore, we affirm.

{¶ 2} On September 3, 2007, appellant executed a written waiver of prosecution by indictment and was charged with one count of kidnaping in an information filed September 14, 2007. On that same date, he pleaded guilty to the charge and the court sentenced him to a term of ten years' imprisonment, to be served consecutive to the sentence imposed in Case No. CR-495634, for an aggregate sentence of twenty-three years. In addition, the court imposed a \$250 fine. Post-release control was made part of the sentence for a period of five years.

{¶ 3} Appellant filed a motion to withdraw his guilty plea on June 3, 2009. He asserted that a manifest injustice would result if he was not permitted to withdraw his plea because there was no evidence to support a kidnaping charge in the police reports and witness statements, copies of which he attached to his motion. He also asserted that he did not have the effective assistance of counsel at his plea hearing. The court denied appellant's motion on June 24, 2009. This appeal followed.

{¶ 4} Appellant's first assignment of error contends that the court abused its discretion by failing to conduct an evidentiary hearing on his motion to withdraw his guilty plea. He asserts that he submitted evidentiary materials sufficient to demonstrate that a manifest injustice

would result if he was not permitted to withdraw his plea. He claims the police reports and witness statements showed that a shooting took place, but not that a kidnaping occurred, so there was no factual support for the kidnaping charge in this case.

{¶ 5} Appellant cannot claim innocence at this late date because he already admitted his guilt. *State v. Pugh*, Cuyahoga App. No. 92633, 2009-Ohio-4374, ¶10. A manifest injustice has been defined as “an extraordinary and fundamental flaw in the plea proceeding.” *Id.* at ¶7 (citations omitted). A manifest injustice has not occurred just because post-plea inquiries may have caused him to change his mind. The common pleas court did not abuse its discretion by denying appellant’s motion to withdraw his plea without conducting an evidentiary hearing. Therefore, we overrule the first assignment of error.

{¶ 6} Second, appellant argues that his plea was not voluntary, knowing, and intelligent because he did not receive the effective assistance of counsel at the plea hearing. Ineffective assistance of counsel may demonstrate that a guilty plea was not knowingly, intelligently, or voluntarily entered. See, e.g., *State v. Mays*, 174 Ohio App.3d 681, 2008-Ohio-128, 884 N.E.2d 607. However, appellant’s oral request for new counsel immediately before the plea hearing began is not, in and of itself, evidence that his appointed attorney was ineffective. While appellant claims that he does not

speak English, his attorney did not speak Spanish, and he did not have an interpreter during their conversations, there is no evidence in the record to support these claims. Appellant finally argues that his attorney did not explain the charges and ramifications of his plea and ensure that he understood the charges, but once again, there is no evidentiary support for this argument. On this record, we find no evidence that counsel's representation of appellant was deficient. Consequently, the court did not abuse its discretion by denying his motion to withdraw his guilty plea on this basis.

{¶ 7} Appellant has not demonstrated that the trial court abused its discretion by denying his motion to withdraw his plea. Therefore, we affirm.

Affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court 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.

KENNETH A. ROCCO, PRESIDING JUDGE

PATRICIA ANN BLACKMON, J., and
JAMES J. SWEENEY, J., CONCUR