

[Cite as *State v. Dent*, 2010-Ohio-6353.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94414

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

RONDELL S. DENT

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-525771

BEFORE: Gallagher, A.J., Sweeney, J., and DeGenaro, J.

RELEASED AND JOURNALIZED: December 23, 2010
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Cuyahoga County Prosecutor

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SEAN C. GALLAGHER, A.J.:

{¶ 1} Appellant, Rondell S. Dent, appeals the judgment of the Cuyahoga County Court of Common Pleas that denied his motion to withdraw his guilty plea. For the reasons stated herein, we affirm the decision of the trial court.

{¶ 2} Dent was indicted on one count of drug possession, a felony of the fifth degree, in violation of R.C. 2925.11. Dent entered a plea of not guilty, and the case was scheduled for trial on October 26, 2009. At that time, the

state set forth the charge, maximum penalties, and plea discussions on the record. The trial court then explained Dent's constitutional rights to him and provided Dent an opportunity to confer with counsel about going to trial. Dent initially expressed a desire to proceed to trial. However, after the jury was called, he elected to plead no contest and executed a jury waiver.

{¶ 3} The trial court engaged Dent in a Crim.R. 11 colloquy. During the colloquy, Dent affirmatively expressed that he understood his rights, the nature of the charge, the effect of his no contest plea, and the maximum penalties that could be imposed. Dent also affirmatively indicated that he was not under the influence of drugs, alcohol, or medication that affected his judgment. He further stated that no threats or promises had been made to induce his plea and that he was satisfied with his representation. The trial court determined that Dent's plea was knowingly, intelligently, and voluntarily made.

{¶ 4} The state placed the following facts on the record. On February 21, 2009, officers responded to 1809 West 47th Street "for a report of a male who was high on PCP, and fighting with his uncle." When the officers arrived, they found Dent "standing in the kitchen and unresponsive." Dent was taken to the hospital and was found to have .11 grams of PCP in his pocket.

{¶ 5} The trial court found Dent guilty as charged and ordered a presentence investigation report. Dent indicated that he wished to retain new counsel, and the trial court expressed that he could retain a new lawyer at any point in time. A sentencing hearing was set for November 23, 2009.

{¶ 6} At sentencing, Dent appeared with the same defense counsel, each of whom spoke for mitigation purposes. The trial court reviewed the presentence investigation report, which reflected an extensive criminal history, and considered the facts of the case. The trial court sentenced Dent to a prison term of six months, with credit for time served.

{¶ 7} After the sentence was imposed, Dent referenced a letter he had faxed to the court prior to sentencing. Dent indicated to the court: “I feel I need new legal advice[.]” In the letter, Dent requested the appointment of new counsel. Further, contrary to his statements at the time he entered his plea, Dent expressed that he was not satisfied with his representation and that he was on medication that affected his judgment.

{¶ 8} The trial court confirmed that Dent wished to withdraw his plea and treated Dent’s request as a motion to withdraw his plea. The court proceeded with a hearing on the record. The court read Dent’s letter, considered the reasons advanced therein, and asked Dent if there was anything further he wished the court to consider. The court then reviewed the record and the statements made by Dent in entering his plea. The court

found that the plea was knowingly, intelligently, and voluntarily entered and denied Dent's motion.

{¶ 9} Dent timely filed this appeal. He raises one assignment of error for review that provides as follows: "I. The trial court abused its discretion in denying appellant's motion to withdraw."

{¶ 10} Crim.R. 32.1 addresses the withdrawal of a plea and provides as follows: "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." A motion made pursuant to Crim.R. 32.1 is addressed to the sound discretion of the trial court, and an appellate court's review is for an abuse of that discretion.

{¶ 11} In this case, Dent never filed a written motion to withdraw his guilty plea. Only after his sentence was pronounced did he reference his faxed letter and request that his plea be withdrawn. Therefore, we find the appropriate standard of review is for a postsentence motion to withdraw, which permits withdrawal only to correct a manifest injustice. Manifest injustice is "a fundamental flaw in the path of justice so extraordinary that the defendant could not have sought redress from the resulting prejudice through another form of application reasonably available to him or her." *State v. Sneed*, Cuyahoga App. No. 80902, 2002-Ohio-6502. It has also been

defined as “a clear or openly unjust act.” *State ex rel. Schneider v. Kreiner*, 83 Ohio St.3d 203, 208, 1998-Ohio-271, 699 N.E.2d 83.

{¶ 12} Dent asserts that his guilty plea was involuntary because he initially expressed a desire to go to trial and asked for new counsel prior to sentencing. Merely because he changed his mind does not establish that his plea was involuntary or coerced. Further, his request for new counsel is not, in and of itself, evidence that his appointed attorney was ineffective, and we find nothing in the record that establishes the ineffectiveness of counsel with regard to his plea. Insofar as Dent stated in his letter that he was dissatisfied with counsel and was under the influence of medication at the time of his plea, these assertions directly contradict the statements he made on the record. Dent does not argue that the trial court failed to properly apprise him of the constitutional implications of his guilty pleas pursuant to Crim.R. 11, claim that he is actually innocent, or raise any other claim that rises to the level of manifest injustice.

{¶ 13} Additionally, although Dent claims he was not afforded an adequate hearing on his request, a hearing on a postsentence motion to withdraw a guilty plea is not required where the record, on its face, conclusively and irrefutably contradicts the allegations in support of withdrawal. *State v. Harris*, Cuyahoga App. No. 89559, 2007-Ohio-6080, ¶ 8.

In any event, the record reflects that the trial court did conduct a hearing

and gave full and fair consideration to Dent's request before denying his motion. Accordingly, we find no abuse of discretion by the trial court.

{¶ 14} Even if we were to consider Dent's request as a presentence motion to withdraw, we still would find no abuse of discretion in the denial of the motion because the record reflects that he was afforded a full Crim.R. 11 plea hearing at which he was represented by highly competent counsel, he was given a complete and impartial hearing on his motion to withdraw, and the court gave full and fair consideration to his request. See *State v. Peterseim* (1980), 68 Ohio App.2d 211, 428 N.E.2d 863.

{¶ 15} For these reasons, Dent's sole assignment of error is overruled.

Judgment 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 issue out of this court directing the common pleas 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.

SEAN C. GALLAGHER, ADMINISTRATIVE JUDGE

JAMES J. SWEENEY, J., and
MARY DeGENARO, J.,* CONCUR

*(Sitting by assignment: Judge Mary DeGenaro of the Seventh District Court of Appeals.)