

[Cite as *State v. Woody*, 2010-Ohio-72.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92929

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MIKE WOODY

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-478107

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

RELEASED: January 14, 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), 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. 2.2(A)(1).

JAMES J. SWEENEY, J.:

{¶ 1} Defendant-appellant, Mike Woody (“defendant”), appeals the trial court’s denial of his motion to withdraw his guilty plea. After reviewing the facts of the case and pertinent law, we affirm.

{¶ 2} On January 16, 2007, defendant pled guilty to involuntary manslaughter and felonious assault, and the court sentenced him to 18 years in prison. On August 20, 2007, defendant filed a delayed direct appeal. However, defendant voluntarily withdrew his appeal, and subsequently filed an application to re-open it, which this Court denied on June 9, 2008, because it was untimely. *State v. Woodey* [sic], Cuyahoga App. No. 90317, 2008-Ohio-2825.

{¶ 3} On January 28, 2009, defendant filed a motion to withdraw his guilty plea, which the trial court denied without hearing on February 9, 2009.

{¶ 4} Defendant appeals and raises three assignments of error, which we will review together:

{¶ 5} “I. The trial court abused its discretion by overruling a motion to withdraw a guilty plea without a hearing because the motion’s factual assertions warranted a hearing.

{¶ 6} “II. The trial court denied defendant his right to procedural due process under the Fifth and Fourteenth Amendments of the U.S. Constitution when it denied his motion to withdraw his guilty plea without an evidentiary hearing.

{¶ 7} “III. The trial court denied defendant his right to procedural due process under the Fifth and Fourteenth Amendments of the U.S. Constitution when it refused to vacate defendant’s guilty pleas.”

{¶ 8} Crim.R. 32.1 states that a “motion to withdraw a plea of guilty or no contest may be made only before a 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.” The defendant has the burden of proof, and post-sentence withdrawal of a guilty plea is only available in extraordinary cases to correct a manifest injustice. *State v. Smith* (1977), 49 Ohio St.2d 261, 264; *State v. Sneed*, Cuyahoga App. No. 80902, 2002-Ohio-6502. Furthermore, an evidentiary hearing “is required if the facts alleged by the defendant and accepted as true would require the court to permit the plea to be withdrawn.” *State v. Hamed* (1989), 63 Ohio App.3d 5, 7. We review the trial court’s decision under an abuse of discretion standard. *Smith*, *supra*.

{¶ 9} In the instant case, defendant argues that it was error for the court to deny his motion to withdraw his guilty plea, or, in the alternative, that the court should have held a hearing before ruling on his motion. In support of this argument, defendant asserts that he has “diminished mental capacity” and a low I.Q. of between 40 and 68; he has a history of taking prescribed “psychoactive medication”; and his trial counsel pressured him into entering a guilty plea.

{¶ 10} A review of the record shows that defendant failed to file a transcript of the plea hearing. Therefore, it is impossible for us to review the Crim.R.11 plea colloquy. “When the transcript, or portion thereof, necessary for the determination of an assigned error is omitted, a reviewing court must presume the validity of the proceedings below.” *State v. Banks*, Cuyahoga App. No. 83783, 2004-Ohio-4478, at ¶15 (citing *Hartt v. Munobe* (1993), 67 Ohio St.3d 3, 7); App.R. 9(B). See, also, *State v. Pringle*, Auglaize App. No 2-03-12, 2003-Ohio-4235 (holding that by failing to file a transcript of the plea hearing, the defendant also failed to demonstrate his claimed error in denying his motion to withdraw plea); *State v. Glenn*, Lake App. No. 2003-L-022, 2004-Ohio-2917 (holding that because the defendant “failed to submit a transcript of the plea hearing for this court to review when considering his appeal,” it is assumed that “the trial court made certain that [the defendant] fully understood the nature and consequences of his plea and * * * entered into the plea voluntarily”).

{¶ 11} Accordingly, we conclude that defendant did not meet his burden of proof to show that a manifest injustice occurred, and we cannot find that the court abused its discretion in denying defendant’s motion to withdraw his guilty plea without holding a hearing. Defendant’s three assignments of error are overruled.

Judgment affirmed.

It is ordered that appellee recover from 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 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.

JAMES J. SWEENEY, JUDGE

KENNETH A. ROCCO, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR