

[Cite as *State v. Knowles*, 2011-Ohio-1685.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 95239**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**STEVEN KNOWLES**

DEFENDANT-APPELLANT

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**JUDGMENT:  
AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-356771

**BEFORE:** Kilbane, A.J., Blackmon, J., and Rocco, J.

**RELEASED AND JOURNALIZED:** April 7, 2011

**APPELLANT**

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**ATTORNEYS FOR APPELLEE**

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**MARY EILEEN KILBANE, A.J.:**

{¶ 1} Defendant-appellant, Steven Knowles (Knowles), pro se, appeals the trial court's denial of his motion to withdraw his guilty plea. Finding no merit to the appeal, we affirm.

{¶ 2} In November 1997, Knowles was charged with two counts of aggravated murder, one count of aggravated robbery, and one count of having

a weapon while under disability.<sup>1</sup> Pursuant to a plea agreement, Knowles pled guilty to one count of murder, the lesser included offense of aggravated murder. All remaining charges and specifications were nolle. The trial court sentenced Knowles to 15 years to life in prison.

{¶ 3} In March 2010, more than 12 years after he entered his guilty plea, Knowles filed a motion to withdraw his plea pursuant to Crim.R. 32.1, and requested an evidentiary hearing. Knowles argued that his plea was not knowingly, intelligently, and voluntarily made. The State opposed the motion, and it was denied by the trial court in May 2010.

{¶ 4} Knowles now appeals, raising one assignment of error for our review.

{¶ 5} ASSIGNMENT OF ERROR ONE

**“The trial court abused its discretion by denying Knowles[’s] post-sentence motion to withdraw guilty plea where Knowles[’s] plea was not knowingly, voluntarily, and intelligently made and entered in violation of Sixth and Fourteenth Amendment[s] to the U.S. Constitution, and Article I, Sections 2, 10, and 16 of the Ohio [Constitution].”**

{¶ 6} Crim.R. 32.1 governs the withdrawal of guilty pleas, and provides that:

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<sup>1</sup>Both aggravated murder counts and the aggravated robbery count carried a three-year firearm specification.

“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.”

{¶ 7} A defendant moving for a postsentence 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. This court has stated that:

**“[a] manifest injustice is defined as a ‘clear or openly unjust act[;]’ \* \* \* ‘an extraordinary and fundamental flaw in the plea proceeding.’ \* \* \* ‘[M]anifest injustice’ comprehends 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.” (Citations omitted.) *State v. Sneed*, Cuyahoga App. No. 80902, 2002-Ohio-6502, ¶13.**

{¶ 8} A motion made pursuant to Crim.R. 32.1 is addressed to the sound discretion of the trial court, and the good faith, credibility, and weight of the movant’s assertions in support of the motion are matters to be resolved by that court. *Smith* at paragraph two of the syllabus. Consequently, an appellate court’s review of a trial court’s denial of a postsentence motion to withdraw a guilty plea is limited to a determination of whether the trial court abused its discretion. *State v. Blatnik* (1984), 17 Ohio App.3d 201, 202, 478 N.E.2d 1016; *State v. Xie* (1992), 62 Ohio St.3d 527, 584 N.E.2d 715. ““The

term “abuse of discretion” connotes more than an error of law or judgment; it implies that the court’s attitude is unreasonable, arbitrary or unconscionable.” *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140, quoting *State v. Adams* (1980), 62 Ohio St.2d 151, 157, 404 N.E.2d 144.

{¶ 9} Knowles argues that the trial court erred in denying his postsentence motion to withdraw his guilty plea for the following reasons: (1) the court failed to ensure that he understood the maximum penalty involved; (2) the court failed to address his reasons for pleading guilty and the sincerity of his protestations of innocence to determine whether his plea was the result of a rational calculation on his part; (3) he was denied effective assistance of counsel; and (4) the court failed to hold a hearing because his claim of actual innocence and the invalidity of his plea are supported in the record.

#### Maximum Penalty Involved

{¶ 10} Knowles 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. Rather, he claims that his guilty plea was involuntary because the trial court failed to ensure that he understood the maximum penalty involved, a nonconstitutional right.

{¶ 11} With respect to nonconstitutional rights, a guilty plea will be considered knowing, intelligent, and voluntary if, before accepting the plea, the trial court substantially complied with the procedures set forth in Crim.R. 11. *State v. Nero* (1990), 56 Ohio St.3d 106, 108, 564 N.E.2d 474. “Substantial compliance means that, under the totality of the circumstances, the defendant subjectively understands the implications of his plea and the rights he is waiving.” *Id.* Further, a defendant must show prejudice before a plea will be vacated for a trial court’s error involving nonconstitutional rights. *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621, ¶17. The test for prejudice is whether the plea would have otherwise been made. *Id.*

{¶ 12} A review of the record reveals that during the plea hearing, the court asked Knowles if anyone has made any promises to him that caused him to enter into this plea. Knowles responded, “[y]es” and stated that he was promised “[f]ifteen years flat, no life, no extra nothing, no nothing.” The court then recessed to allow Knowles the opportunity to clarify the matter with his attorney. Afterwards, the court resumed and advised Knowles twice that the offense of murder carries with it a possible term of incarceration of 15 years to life and a fine in the amount of \$20,000. When asked if he understood, Knowles responded, “[y]es, sir.” Since the trial court informed

Knowles of the maximum penalty, we find that the trial court substantially complied with Crim.R. 11.

### Protestation of Innocence

{¶ 13} Knowles relies primarily on *N. Carolina v. Alford* (1970), 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162, and argues that the trial court erred when it failed to engage in the necessary dialogue to determine that his plea was the result of a rational calculation on his part. Knowles's reliance on *Alford* is misplaced.

{¶ 14} In *Alford*, United States Supreme Court found that a guilty plea coupled with a claim of innocence should not be accepted unless there is factual basis for the plea and the trial court has inquired into and sought to resolve the conflict between the waiver of trial and claim of innocence. *Id.* at 37. However, “[i]mplicit in any *Alford* plea is the requirement [that] a defendant actually state his innocence on the record when entering a guilty plea.” *State v. Murphy* (Aug. 31, 1995), Cuyahoga App. No. 68129, citing *State v. Morgan* (Aug. 4, 1994), Cuyahoga App. No. 65973; *State v. Ogletree* (Oct. 14, 1993), Cuyahoga App. No. 62943.

{¶ 15} In the instant case, the record discloses no protestations of innocence at the time the court accepted Knowles's guilty plea. Instead, Knowles waited to proclaim his innocence at sentencing. Based on these

facts, *Alford* does not apply, and the trial court had no duty to determine whether a factual basis supported Knowles's guilty plea.

### Ineffective Assistance of Counsel

{¶ 16} Third, Knowles argues that given his low IQ, counsel was ineffective for failing to ensure that: (1) the trial court engaged in an *Alford* colloquy; (2) he "subjectively understood" that he had a right to trial; and (3) he could subpoena witnesses on his behalf.

{¶ 17} It is well established that a guilty plea waives the right to claim the defendant was prejudiced by the ineffective assistance of counsel, except to the extent that the defects complained of caused the plea to be less than knowing and voluntary. *State v. King*, Cuyahoga App. No. 91909, 2009-Ohio-4551, ¶47, citing *State v. Caldwell* (Aug. 13, 2001), Butler App. No. CA99-08-144. Thus, to prove a claim of ineffective assistance of counsel with a guilty plea, Knowles must demonstrate that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. *Hill v. Lockhart* (1985), 474 U.S. 52, 58-59, 106 S.Ct. 366, 88 L.Ed.2d 203; *Caldwell*.

{¶ 18} A review of the record does not support Knowles's contentions. As discussed above, the trial court had no obligation to conduct an *Alford* colloquy. Furthermore, at the plea hearing the trial court informed Knowles of his constitutional rights, including the right to trial and the right to



subpoena witnesses, and ensured that he understood that he was waiving those rights by pleading guilty. Moreover, this court had previously found that “the standard for determining the competency to stand trial and the competency to enter a plea [are] the same.” *State v. Bolin* (1998), 128 Ohio App.3d 58, 62, 713 N.E.2d 1092. Here, the trial court found that Knowles was competent to stand trial prior to his plea.

{¶ 19} Based on the foregoing, Knowles has failed to demonstrate that but for counsel’s errors, he would not have pled guilty. Accordingly, we find that he was not denied effective assistance of counsel.

#### Hearing

{¶ 20} Lastly, Knowles argues that a hearing was required because the affidavits he attached to his motion to withdraw his guilty plea support his innocence and demonstrate that his plea was not knowingly and voluntarily made.

{¶ 21} In *State v. Yearby* (Jan. 24, 2002), Cuyahoga App. No. 79000, this court stated that the trial court “need not hold an evidentiary hearing in a motion to withdraw a plea if the only evidence provided consists of affidavits from interested parties which conflict with the facts elicited at the plea hearing.”

{¶ 22} Furthermore, a postsentence motion to withdraw a guilty plea is subject to denial without a hearing “when the record indicates that the

movant is not entitled to relief and the movant has failed to submit evidentiary documents sufficient to demonstrate a manifest injustice.” (Citations omitted.) *State v. Russ*, Cuyahoga App. No. 81580, 2003-Ohio-1001, ¶12. A trial court may, in the exercise of its discretion, judge the credibility of affidavits in determining whether to accept the affidavits as true statements of fact. *State v. Mays*, 174 Ohio App.3d 681, 2008-Ohio-128, 884 N.E.2d 607, ¶14, citing *State v. Robinson*, Ashtabula App. No. 2003-A-0125, 2005-Ohio-5287.

{¶ 23} Here, Knowles’s argument is based on a self-serving affidavit and affidavits from his mother, pastor, and an allegedly recanting witness. However, these affidavits are sworn by interested parties. Therefore, the trial court could properly find these affidavits lacked sufficient credibility to require a hearing because of the nature of the evidence provided in these affidavits and the relationship between the affiants and Knowles. In addition, “[w]hen a petitioner submits a claim that his guilty plea was involuntary, a “record reflecting compliance with Crim.R. 11 has greater probative value” than a petitioner’s self-serving affidavit.” *Yearby*, quoting *State v. Brehm* (July 18, 1997), Seneca App. No. 13-97-05.

{¶ 24} Therefore, we find that the court did not abuse its discretion by denying Knowles’s motion to withdraw his guilty plea without a hearing.

{¶ 25} Accordingly, the sole assignment of error is overruled.

Judgment is 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.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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MARY EILEEN KILBANE, ADMINISTRATIVE JUDGE

PATRICIA A. BLACKMON, J., and  
KENNETH A. ROCCO, J., CONCUR