

[Cite as *State v. Bonner*, 2011-Ohio-843.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95244

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CHRISTOPHER J. BONNER

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-452793

BEFORE: Sweeney, J., Kilbane, A.J., and Blackmon, J.

RELEASED AND JOURNALIZED: February 24, 2011
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JAMES J. SWEENEY, J.:

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

{¶ 2} On August 3, 2004, defendant pled guilty to four counts of rape, five counts of gross sexual imposition, eight counts of kidnapping, seven counts of importuning, and five counts of disseminating matter harmful to juveniles. The charges related to defendant’s five-year-old and two-year-old daughters. On September 20, 2004, the court sentenced defendant to an agreed upon 11 years in prison.

{¶ 3} On December 22, 2009, defendant filed a motion to withdraw his guilty plea, which the court denied on May 11, 2010.

{¶ 4} Defendant appeals and raises one assignment of error for our review. “I.

The trial court erred by denying appellant’s motion to set aside the judgment of conviction and withdraw his guilty pleas.”

{¶ 5} Specifically, defendant argues that his counsel was ineffective in failing to explain to him why he was pleading guilty to kidnapping. Defendant alleges that he did not commit the kidnapping offenses, and had counsel properly explained kidnapping to him, he would not have pled guilty to the charges.

{¶ 6} We review motions to withdraw guilty pleas for an abuse of discretion. *State v. Smith* (1977), 49 Ohio St.2d 261, 361 N.E.2d 1324. Ohio Crim.R. 32.1 states that 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.” See, also, *State v. Xie* (1992), 62 Ohio St.3d 521, 584 N.E.2d 715. A manifest 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.” *State v. Sneed*, Cuyahoga App. No. 80902, 2002-Ohio-6502, ¶13.

{¶ 7} R.C. 2905.01 defines kidnapping, and it states, in pertinent part, as follows: “(A) No person * * * in the case of a victim under the age of thirteen * * *, by any means, shall * * * restrain the liberty of the other person * * * (2) [t]o facilitate the commission of

any felony * * * [or] (4) [t]o engage in sexual activity, as defined in section 2907.01 of the Revised Code, with the victim against the victim's will * * *.” In *State v. Logan*, the Ohio Supreme Court held that “restraint of the victim by force, threat, or deception is sufficient” to constitute kidnapping; “* * * [t]hus, implicit within every forcible rape is a kidnapping.” *State v. Logan* (1979), 60 Ohio St.2d 126, 130, 397 N.E.2d 1345.

{¶ 8} In *Hill v. Lockhart* (1985), 474 U.S. 52, 58-59, 106 S.Ct. 366, 88 L.Ed.2d 203, the United States Supreme Court set forth the standard for reviewing challenges to guilty pleas based on ineffective assistance of counsel. First, “the defendant must show that counsel’s representation fell below an objective standard of reasonableness.” *Id.*, citing *Strickland v. Washington* (1984), 466 U.S. 668, 687-688, 104 S.Ct. 2052, 80 L.Ed.2d 674. “The second, or ‘prejudice,’ requirement * * * focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process. In other words, in order to satisfy the ‘prejudice’ requirement, the defendant must show that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” *Id.*

{¶ 9} To support defendant’s allegation of a manifest injustice, he submitted two evidentiary documents — his affidavit and an affidavit from his ex-wife. Defendant’s affidavit merely states that, prior to entering his guilty plea, he asked his attorney to explain the kidnapping charges, but his attorney did not answer defendant’s questions. This affidavit

does not specify a manifest injustice, nor does it state that had counsel explained kidnapping, defendant would have gone to trial.

{¶ 10} The second evidentiary document that defendant submitted is his ex-wife's affidavit. She stated that, prior to defendant entering his guilty plea, she questioned a Cleveland police officer about the kidnapping charges. The officer told her that "they filed 'as many charges as possible, knowing some would be knocked off.'" She also stated that the police lied to defendant when they told him "that they just were interested in getting him help and that they were not interested in charging him with any crimes."

{¶ 11} This court has held that "[a] trial court may discount self-serving affidavits from the [defendant] or his family members." *State v. Moore* (1994), 99 Ohio App.3d 748, 651 N.E.2d 1319. Additionally, "[a] mere change of heart * * * is insufficient justification" to grant a motion to withdraw a guilty plea. *State v. Lambros* (1988), 44 Ohio App.3d 102, 541 N.E.2d 632, at paragraph one of the syllabus. Furthermore, "an undue delay between the occurrence of the alleged cause for withdrawal and the filing of the motion is a factor adversely affecting the credibility of the movant and militating against the granting of the motion." *State v. Smith* (1977), 49 Ohio St.2d 261, 264, 361 N.E.2d 1324.

{¶ 12} The transcript of defendant's plea hearing shows that the court asked defendant if he was satisfied with his legal representation. Defendant answered that he was. The court then asked, "Do you have any questions about this case or this hearing which you would

like to have answered?” Defendant replied, “Not at this time.” Later in the hearing, the court again asked if defendant had any questions, and defendant answered that he did not.

{¶ 13} Approximately seven weeks after entering his plea, defendant was sentenced to an agreed upon 11 years in prison. Defendant was given the opportunity to speak at this hearing; however, he did not raise the issue of his lack of understanding the kidnapping charges. Defendant confessed to sexually abusing his five-year-old and two-year-old daughters in a written statement to the police. The charges against him carried a sentence of life in prison without the possibility of parole. In exchange for his guilty plea, the state agreed to a significantly reduced prison sentence. More than five years later, defendant filed his motion to withdraw this plea, offering no explanation for the undue delay.

{¶ 14} Given these facts, we cannot say that the court abused its discretion in denying defendant’s motion to withdraw his guilty plea and his 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.

JAMES J. SWEENEY, JUDGE

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