

[Cite as *State v. Mongo*, 2015-Ohio-1139.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 100926

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

STEVEN MONGO

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-13-571165-C and CR-13-571726-B

BEFORE: Blackmon, J., Celebrezze, A.J., and McCormack, J.

RELEASED AND JOURNALIZED: March 26, 2015

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PATRICIA ANN BLACKMON, J.:

{¶1} Appellant Steven Mongo (“Mongo”) appeals the trial court’s denial of his pro se presentence motion to withdraw his guilty plea. Mongo assigns the following error for our review:

Defendant was materially prejudiced by the failure of the court to conduct a hearing on his pre-sentence motion to withdraw his plea of guilty to two charges of manslaughter.

{¶2} Having reviewed the record and pertinent law, we affirm the trial court’s decision.

The apposite facts follow.

{¶3} On January 30, 2013, the Cuyahoga County Grand Jury returned a multi-count indictment against Mongo and four codefendants in Cuyahoga C.P. No. CR-13-571165-C. The charges included aggravated robbery, kidnapping, aggravated murder, attempted murder, felonious assault, and obstructing official business. Most of the charges had one-and-three-year firearm specifications attached. On February 4, 2013, Mongo appeared for arraignment with assigned counsel, and pleaded not guilty to the charges.

{¶4} On March 4, 2013, the grand jury indicted Mongo, along with two codefendants, in Cuyahoga C.P. No. CR-13-571726-B, for charges of aggravated robbery, kidnapping, theft, and having weapons while under disability. On March 7, 2013, Mongo appeared for arraignment with assigned counsel, and pleaded not guilty to the charges.

{¶5} On March 29, 2013, pursuant to a plea agreement with the state, Mongo retracted his previously entered not guilty pleas in CR-13-571165-C, and pleaded guilty to two counts of manslaughter with one-and-three-year firearm specifications attached. In addition, pursuant to a plea agreement with the state, Mongo retracted his previously entered not guilty pleas in CR-13-571726-B, and pleaded guilty to one count of aggravated robbery.

{¶6} Further, in exchange for the guilty pleas, the state nolleed the remaining charges in both cases. Finally, pursuant to the terms of the plea agreement, Mongo agreed to cooperate with law enforcement and to testify against the remaining codefendants.

{¶7} On August 16, 2013, and August 20, 2013, while still represented by assigned counsel, Mongo filed two pro se motions to withdraw his guilty pleas in both CR-13-571165-C and CR-13-571726-B.

{¶8} On December 4, 2013, the last of Mongo's codefendants proceeded to trial. Mongo, pursuant to the plea agreement, testified in the trial. During the trial, Mongo requested and relied on the assistance of his assigned counsel.

{¶9} On December 18, 2013, Mongo appeared with his assigned counsel for the sentencing hearing. The trial court sentenced Mongo to 11 years each for the two manslaughter charges in CR-13-571165-C, and ordered that those sentences were to be served consecutively for a period of 22 years. The trial court sentenced Mongo to eight years for the aggravated robbery charge in CR-13-571726-B. The trial court ordered that the sentences in the two respective cases were to be served concurrently.

Presentence Motion to Withdraw Guilty Plea

{¶10} In the sole assigned error, Mongo argues that the trial court erred by failing to conduct a hearing on his presentence motion to withdraw his guilty pleas.

{¶11} “[A] presentence motion to withdraw a guilty plea should be freely and liberally granted.” *State v. Xie*, 62 Ohio St.3d 521, 527, 584 N.E.2d 715 (1992).

However, “a defendant does not have an absolute right to withdraw a plea prior to sentencing. Therefore, the trial court must conduct a hearing to determine whether there is a reasonable and legitimate basis for the withdrawal of the plea. * * * Absent an abuse of discretion on the part of the trial court in making the ruling, its decision must be affirmed.”

Id.

{¶12} Initially, we observe that Mongo filed his motions to withdraw the guilty pleas entered in the two respective cases on a pro se basis, even though at all times throughout the proceedings below, he was represented by two court-appointed counsel.

{¶13} It is well established that although a defendant has the right to counsel or the right to act pro se, a defendant does not have any right to “hybrid representation.” *State v. Martin*, 103 Ohio St.3d 385, 2004-Ohio-5471, 816 N.E.2d 227, paragraph one of the syllabus; *State v. Thompson*, 33 Ohio St.3d 1, 6-7, 514 N.E.2d 407 (1987). The right to counsel and the right to act pro se “are independent of each other and may not be asserted simultaneously.” *Martin* at paragraph one of the syllabus.

{¶14} We have previously determined that when counsel represents a criminal defendant, a trial court may not entertain a defendant’s pro se motion. *State v. Washington*, 8th Dist. Cuyahoga Nos. 96565 and 96568, 2012-Ohio-1531, ¶ 11 (“Because [defendant] chose to proceed with legal representation, the court could not consider [defendant]’s motion to withdraw his plea, which his appointed counsel did not agree with.”); *State v. Pizarro*, 8th Dist. Cuyahoga No. 94849, 2011-Ohio-611, ¶ 9 (“Had the trial court entertained defendant’s pro se motion while defendant was simultaneously being represented by appointed counsel, this would have effectively constituted hybrid representation in violation of the established law.”).

{¶15} Other appellate districts have determined the same. *State v. Smith*, 4th Dist. Highland No. 09CA29, 2010-Ohio-4507, ¶ 100, citing *Thompson*, at ¶ 6-7 (concluding that the trial court did not err by refusing to consider criminal defendant’s pro se motions when counsel represented defendant, because criminal defendant has no corresponding right to act as

co-counsel on his own behalf); *State v. Davis*, 2006-Ohio-193, 841 N.E.2d 313, ¶ 12 (“[W]here a defendant who is represented by counsel files pro se motions and there is no indication that defense counsel joins in those motions or indicates a need for the relief sought by the defendant pro se, such motions are not proper and the trial court may strike them from the record.”); *State v. Greenleaf*, 11th Dist. Portage No. 2005-P-0017, 2006-Ohio-4317, ¶ 70, quoting *Thompson*, at ¶ 6-7 (“Once appellant accepts counsel’s assistance and does not move the court to proceed pro se, he may not ‘act as co-counsel on his own behalf.’”).

{¶16} Here, while represented by counsel, Mongo unilaterally filed pro se motions to withdraw his plea in the respective cases. After filing the aforementioned motions, Mongo continued to be represented by his two assigned counsel at the sentencing hearing, who addressed the court on Mongo’s behalf.

There is no indication that his assigned counsel were even aware that Mongo had filed these motions.

{¶17} Further, when Mongo personally addressed the court during the sentencing hearing, he did not raise the matter of his pro se motions to withdraw his guilty pleas. Finally, had defense counsel filed a presentence motion to withdraw or joined in the pro se motion that was filed, the law would have required some type of hearing. *State v. Wittine*, 8th Dist. Cuyahoga No. 90747, 2008-Ohio-5745. Consequently, had the trial court entertained Mongo’s pro se motions while he was simultaneously being represented by assigned counsel, this would have effectively constituted hybrid representation in violation of the established law. *Id.*

{¶18} Based upon the foregoing reasons, the trial court did not err by denying Mongo’s pro se motions to withdraw his guilty pleas. Accordingly, we overrule the sole assigned error.

{¶19} Judgment affirmed.

It is ordered that appellee recover of 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 convictions 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.

PATRICIA ANN BLACKMON, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and
TIM McCORMACK, J., CONCUR