

[Cite as *State v. Sheppard*, 2015-Ohio-1958.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102085

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

WILLIAM SHEPPARD, JR.

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-13-581350-A

BEFORE: S. Gallagher, J., E.A. Gallagher, P.J., and Laster Mays, J.

RELEASED AND JOURNALIZED: May 21, 2015

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SEAN C. GALLAGHER, J.:

{¶1} Defendant William Sheppard, Jr., appeals the denial of his presentence motion to withdraw his guilty plea. For the following reasons, we affirm.

{¶2} Sheppard was charged with ten counts stemming from the killing of his three-year-old son. The coroner reported that the child suffered severe injuries; he was struck at least once on the head, 14 times to the chest, and 8 times on the back, all causing internal injuries. Eventually, and after a thorough colloquy, Sheppard pleaded guilty to murder pursuant to R.C. 2903.02(B), felonious assault, and child endangering with the agreement that all three counts merged into the mandatory sentence on the murder charge — carrying a mandatory indefinite sentence of 15 years to life. Sheppard pleaded guilty the day before his trial was set to commence. At no time did Sheppard ever proclaim innocence, and in fact, during his sentencing hearing he acknowledged that he caused the harm to his son. Tr. 41:1-6.

{¶3} The trial court enjoyed no discretion in fashioning the final sentence, having already agreed at the change of plea hearing to merge all counts into the mandatory, 15 years to life sentence for the murder charge; but nevertheless, sentencing was delayed for the purposes of obtaining a presentence investigation report. During that time, Sheppard had a change of heart and asked his counsel to file a motion to disqualify himself and a motion to withdraw the guilty plea. The motion to withdraw was filed, stating that Sheppard was innocent and was induced into pleading guilty because of the total time he

faced on all ten charges, the most serious of which potentially carried a life without parole sentence. After a hearing, the trial court denied Sheppard's motion.

{¶4} Sheppard appealed claiming his trial counsel was ineffective for failing to zealously pursue the motion to withdraw. We disagree. In order to substantiate a claim of ineffective assistance of counsel, the appellant must show that (1) counsel's performance was deficient and (2) the deficient performance prejudiced the defendant so as to deprive him of a fair trial. *State v. Trimble*, 122 Ohio St.3d 297, 2009-Ohio-2961, 911 N.E.2d 242, ¶ 98, citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). A presentence motion to withdraw a guilty plea was not warranted under the facts and circumstances of this case, and therefore, Sheppard cannot show prejudice even if we assume deficient performance.

{¶5} Generally, 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, and it is within the sound discretion of the trial court to determine what circumstances justify granting such a motion. *Id.* "One of the factors to be weighed in considering a motion to withdraw a plea is a claim of innocence." *State v. Westley*, 8th Dist. Cuyahoga No. 97650, 2012-Ohio-3571, ¶ 7, citing *State v. Fish*, 104 Ohio App.3d 236, 240, 661 N.E.2d 788 (1st Dist.1995). "When faced with this claim, 'the trial judge must determine whether the claim of innocence is anything more than the defendant's change of heart about the plea agreement.'" *Id.*, quoting *State v. Kramer*, 7th Dist.

Mahoning No. 01-C.A.-107, 2002-Ohio-4176, ¶ 58. “A mere change of heart regarding a guilty plea and the possible sentence is insufficient justification for the withdrawal of a guilty plea.” *Id.*, citing *State v. Drake*, 73 Ohio App.3d 640, 645, 598 N.E.2d 115 (8th Dist.1991).

{¶6} Upon reviewing the entire record, we find Sheppard’s request to withdraw his plea stemmed from the mere change of heart. The trial court held a full and thorough Crim.R. 11, change of plea hearing during which competent counsel represented Sheppard. Sheppard denied being promised anything in exchange for, or otherwise coerced into, pleading guilty and indicated his satisfaction with his counsel’s advice and assistance. He further acknowledged his understanding of the nature of the offenses and any possible defenses. During the hearing, Sheppard exhibited no indicia of innocence, confusion, compromised competency, or deficient understanding of any of the consequences of entering a guilty plea.

{¶7} Nevertheless, the trial court gave Sheppard a full and impartial hearing on his motion to withdraw the guilty plea, and full and fair consideration to his plea withdrawal request. At that hearing, Sheppard stated his wish to withdraw his plea because of a newly developed belief of innocence and his claim of entering the plea under coercion and duress caused by the extent of punishment he faced going to trial. Sheppard only provided blanket statements, and he refused to elaborate even after the trial court directly addressed his claims. As the sentencing proceeding progressed, Sheppard also acknowledged no intention to hurt his young son, implying he was cognizant of the harm

he caused and his lack of innocence. Sheppard also failed to explain why the plea was not otherwise knowingly, intelligently, and voluntarily entered. Accordingly, Sheppard's sole assignment of error is overruled.

{¶8} Sheppard's conviction 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. 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, JUDGE

EILEEN A. GALLAGHER, P.J., and
ANITA LASTER MAYS, J., CONCUR