

[Cite as *State v. Heisa*, 2015-Ohio-2269.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 101877

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**SEAN A. HEISA**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
**AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case Nos. CR-12-569756-A and CR-12-570153-A

**BEFORE:** Keough, P.J., Stewart, J., and Blackmon, J.

**RELEASED AND JOURNALIZED:** June 11, 2015

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KATHLEEN ANN KEOUGH, P.J.:

{¶1} Defendant-appellant, Sean Heisa, appeals his guilty pleas, sentence, and the trial court's decision denying his presentence motion to withdraw his guilty pleas. For the reasons that follow, we affirm.

{¶2} In December 2012, Heisa was named in a three count indictment under Cuyahoga County C.P. No. CR-12-569756 for offenses arising out of a November 8, 2012 robbery that occurred at a cigarette store. He was charged with one count of kidnapping and aggravated robbery, both felonies of the first degree and both containing one- and three-year firearm specifications. He was also charged with theft, a first-degree misdemeanor. A warrant was issued for Heisa's arrest.

{¶3} In January 2013, Heisa was named in a two-count indictment under Cuyahoga County C.P. No. CR-12-570153 for offenses arising out of a November 16, 2012 robbery that occurred at a convenience store. He was charged with one count each of aggravated robbery and robbery, each containing a three-year firearm specification. A warrant was issued for Heisa's arrest.

{¶4} In February 2014, Heisa was arraigned on both cases. During pretrial proceedings, Heisa was ordered to undergo a psychological evaluation to determine whether he was competent to stand trial. Due to Heisa's being uncooperative during the evaluation and refusing to submit to the evaluator's questions, he was ordered to North

Coast Behavioral Center for an inpatient evaluation. Heisa was subsequently found competent to stand trial.

{¶5} Heisa filed a written motion expressing his desire to proceed with his cases without the assistance of counsel. Following a hearing, the trial court granted Heisa's request and accepted his waiver of counsel. His appointed attorney would act as "stand-by" counsel.

{¶6} In June 2014, Heisa entered into a plea agreement on both cases, which included a jointly recommended sentence. In Case No. CR-12-569756, Heisa agreed to plead guilty to the aggravated robbery charge, including the attendant one-year firearm specification. In exchange, the state agreed to nolle the kidnapping and theft charges and the three-year firearm specification attendant to the aggravated robbery charge. In Case No. CR-12-570153, the state amended the aggravated robbery charge by deleting the three-year firearm specification and nolle the robbery charge. In exchange, Heisa agreed to plead guilty to the aggravated robbery charge, as amended. The state and Heisa jointly recommended to the trial court a total prison sentence of four years, which would be served consecutively to his current prison sentence for offenses arising out of Fairfield County. After engaging in a thorough and complete Crim.R. 11 colloquy, the court accepted Heisa's guilty pleas.

{¶7} Prior to sentencing, however, Heisa moved to withdraw his guilty pleas contending that he was induced into pleading guilty and that he was innocent of the

charges. Following a hearing, the court denied Heisa's motion and proceeded to sentencing.

{¶8} In Case No. CR-12-569756, the court sentenced Heisa to the minimum sentence of four years — one year for the firearm specification to be served prior to and consecutive to three years on the aggravated robbery charge. In Case No. CR-12-570153, the court imposed a three-year prison sentence on the aggravated robbery charge. The court ordered the sentences to be served concurrently, thus, imposing the jointly recommended four-year prison sentence. After making all necessary and relevant findings pursuant to R.C. 2929.14(C) and as part of the agreed sentence, the court ordered this four-year aggregate sentence consecutive to Heisa's current prison term for offenses arising out of Fairfield County. The court's R.C. 2929.14(C) findings were incorporated in the trial court's journal entry of sentencing.

{¶9} Heisa now appeals, raising three assignments of error challenging his plea, the court's denial of his motion to withdraw his plea, and his sentence. The assignments of error will be addressed out of order.

### I. Factual Basis

{¶10} In his second assignment of error, Heisa contends that the trial court erred to his prejudice by not inquiring into the factual basis for the plea, especially given the motion to withdraw his plea filed before sentencing, his mental health diagnosis, and his lack of legal representation.

{¶11} A trial court is not required pursuant to Crim.R. 11(C) to set forth any factual basis for a guilty plea during a plea hearing. “Implicit within Crim.R. 11(C), is the idea that a guilty plea constitutes a full admission of factual guilt that obviates the need for a fact-finding trial on the charges.” *State v. Snuffer*, 8th Dist. Cuyahoga Nos. 96480, 96481, 96482, and 96483, 2011-Ohio-6430, ¶ 10, citing *State v. Wilson*, 58 Ohio St.2d 52, 388 N.E.2d 745 (1979), paragraph one of the syllabus. *See also State v. Busby*, 8th Dist. Cuyahoga No. 49030, 1985 Ohio App. LEXIS 6551 (Apr. 25, 1085) (trial court is not required to make a determination that there is a factual basis for the guilty plea prior to accepting the guilty plea). Furthermore, a plea of guilty is a complete admission of guilt. Crim.R. 11(B)(1).

{¶12} The record demonstrates that Heisa understood the charges against him at the time of the plea hearing. In fact, prior to the state setting forth the plea that Heisa ultimately agreed to enter into, the trial court advised Heisa,

Also entering into a plea bargain and entering a change of plea to guilty to certain enumerated charges, a plea of guilty is a complete admission of your guilt. You’re accepting the facts as alleged and you’re relieving the [s]tate of Ohio of their burden of proof in each case, is that correct?

Heisa admitted that this statement was correct. The fact that Heisa subsequently filed a motion to withdraw his plea, does not necessarily indicate that he did not understand the charges against him. As it will be subsequently explained below when addressing Heisa’s first assignment of error, the court gave full and fair consideration to Heisa’s motion to withdraw his guilty plea, including all the facts and circumstances surrounding Heisa’s cases and the plea hearing.

{¶13} Additionally, while Heisa may have a mental health diagnosis, the report following his psychological evaluation found him competent to stand trial, which includes his ability to understand the nature of the proceedings against him and to assist in his defense. Although Heisa waived his right to counsel subsequent to the competency determination and proceeded pro se during the remainder of the proceedings, his court appointed attorney acted as “stand by counsel” during pretrial hearings, including during the plea negotiations.

{¶14} Accordingly, the trial court did not err by failing to inquire about the factual basis for the plea. The second assignment of error is overruled.

## II. Motion to Withdraw Guilty Plea

{¶15} In his first assignment of error, Heisa contends that the trial court erred to his prejudice by not allowing him to withdraw his guilty plea because his motion to withdraw was made prior to the sentencing.

{¶16} Under Crim.R. 32.1, “[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.”

{¶17} In general, “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). It is well established, however, that “[a] defendant does not have an absolute right to withdraw a guilty plea prior to sentencing. A trial court must conduct a hearing to

determine whether there is a reasonable legitimate basis for the withdrawal of the plea.”

*Id.* at paragraph one of the syllabus.

{¶18} The decision to grant or deny a presentence motion to withdraw is within the trial court’s discretion. *Id.* at paragraph two of the syllabus. Absent an abuse of discretion, the trial court’s decision must be affirmed. *Id.* at 527. An abuse of discretion requires a finding that the trial court’s decision was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). A trial court does not abuse its discretion in denying a motion to withdraw the plea where a defendant was (1) represented by competent counsel, (2) given a full Crim.R. 11 hearing before he entered a plea, (3) given a complete hearing on the motion to withdraw, and (4) the record reflects that the court gave full and fair consideration to the plea withdrawal request. *State v. Peterseim*, 68 Ohio App.2d 211, 428 N.E.2d 863 (8th Dist.1980), paragraph three of the syllabus.

{¶19} This court has also set forth additional factors to consider, including that (1) the motion was made in a reasonable time; (2) the motion stated specific reasons for withdrawal; (3) the record shows that the defendant understood the nature of the charges and possible penalties; and (4) the defendant had evidence of a plausible defense. *State v. Pannell*, 8th Dist. Cuyahoga No. 89352, 2008-Ohio-956, ¶ 13, citing *State v. Benson*, 8th Dist. Cuyahoga No. 83178, 2004-Ohio-1677.

{¶20} In applying these factors, we find that the trial court did not abuse its discretion in denying Heisa’s motion to withdraw his guilty plea. While Heisa



represented himself during the proceedings, his appointed attorney acted as “stand-by” counsel, including during plea negotiations. Additionally, during the plea colloquy, Heisa admitted he was satisfied with his stand-by counsel’s representation and assistance.

{¶21} The record shows that Heisa received a full Crim.R. 11 hearing at which he stated he wanted to enter into the plea. The record demonstrates that the trial court engaged in the requisite and complete Crim.R. 11 colloquy, which included Heisa’s confirmation that no threats or promises (except an agreed upon sentence) were made to induce him into pleading guilty to the aggravated robbery offenses.

{¶22} The record further shows that the trial court held a complete hearing on Heisa’s motion to withdraw his guilty plea, and the trial court gave a full and fair consideration of his motion. Heisa moved to withdraw his guilty plea professing actual innocence and also contending that he was induced into pleading guilty. As previously discussed above, Heisa admitted during the plea hearing that no threats or promises were made to induce him into pleading guilty. Furthermore, Heisa negotiated on his own behalf a better plea agreement consisting of a lesser penalty than what his stand-by counsel previously obtained.

{¶23} His protestation of innocence was not based on any specific defense or fact revealing innocence, but rather the motion was based on alleged flaws in the state’s evidence or the lack of evidence, which according to Heisa, would be insufficient to convict him of the crimes. A defendant’s protestations of innocence are not sufficient grounds for vacating a plea that was voluntarily, knowingly, and intelligently entered.

*State v. Miniffee*, 8th Dist. Cuyahoga No. 99202, 2013-Ohio-3146, ¶ 27, citing *State v. Bloom*, 8th Dist. Cuyahoga No. 97535, 2012-Ohio-3805, ¶ 13. “By inference, all defendants who request a withdrawal of their guilty plea do so based upon some claim of innocence. \* \* \* A mere change of heart regarding a guilty plea and the possible sentence is insufficient justification for the withdrawal of a guilty plea.” *Bloom* at *id.*, quoting *State v. Abdelhag*, 8th Dist. Cuyahoga No. 71136, 1997 Ohio App. LEXIS 3394, \*11 (July 31, 1997).

{¶24} As previously discussed, Heisa made a knowing, voluntary, and intelligent plea. Furthermore, the trial court considered Heisa’s arguments, and noted that during the plea hearing, Heisa made no profession of innocence, but admitted to the facts by pleading guilty. It appears from our review of the record that Heisa’s motivation to withdraw his plea was merely a change of heart.

{¶25} Based on Heisa’s arguments in support of his motion to withdraw his plea and the record before this court, Heisa has set forth no legitimate basis for the withdrawal of his plea. The record supports the conclusion that Heisa made knowing, voluntary, and intelligent guilty pleas in both cases. Accordingly, we find that the court acted within its discretion when it denied Heisa’s motion. The first assignment of error is overruled.

### III. Sentence

{¶26} Heisa’s third assignment of error states,

That the trial court abused its discretion and erred to the prejudice of appellant by sentencing him to a total of four years imprisonment to be served consecutive to an already 22-year sentence, in that a consecutive

sentence is not necessary to protect the public, and is disproportionate to the seriousness of the offender's conduct.

{¶27} An agreed-upon sentence may not be appealed if (1) both the defendant and the state agree to the sentence, (2) the trial court imposes the agreed sentence, and (3) the sentence is authorized by law. R.C. 2953.08(D)(1). If all three conditions are met, the defendant may not appeal the sentence. *State v. Underwood*, 124 Ohio St.3d 365, 368, 2010-Ohio-1, 922 N.E.2d 923.

{¶28} In this case, the four-year sentence was jointly recommended by Heisa and the state. The parties also agreed that the four-year sentence would be served consecutively to Heisa's current prison sentence arising out of Fairfield County. The trial court acknowledged the recommendation and imposed the four-year sentence, including running the sentence consecutively to the Fairfield County sentence. Finally, the four-year sentence is authorized by law for the charges to which Heisa pleaded guilty — two first-degree felony counts of aggravated robbery, with one count containing a one-year firearm specification. *See* R.C. 2929.14(A)(1) and (B)(1)(a)(iii). Therefore, Heisa's sentence is not appealable. *Underwood at id.*

{¶29} Even addressing the merits of Heisa's assignment of error, our review of the record demonstrates that the trial court made the requisite statutory findings for consecutive sentences under R.C. 2929.14(C) at sentencing. Furthermore, the trial court properly incorporated its findings into the journal entry of sentencing, as required by the Ohio Supreme Court's pronouncement in *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, syllabus.

{¶30} Accordingly, his third assignment of error is overruled.

{¶31} 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 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.

KATHLEEN ANN KEOUGH, PRESIDING JUDGE

MELODY J. STEWART, J., and  
PATRICIA ANN BLACKMON, J., CONCUR