

[Cite as *State v. Tatum*, 2015-Ohio-2864.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102261

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

GREGORY D. TATUM

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-11-554763-C

BEFORE: E.A. Gallagher, J., Celebrezze, A.J., and E.T. Gallagher, J.

RELEASED AND JOURNALIZED: July 16, 2015

FOR APPELLANT

Gregory D. Tatum, pro se
Trumbull Correctional Institution
Inmate No. A642725
P.O. Box 901
5701 Burnett Road
Leavittsburg, Ohio 44430

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor
BY: Daniel T. Van
Assistant Prosecuting Attorney
Justice Center, 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

EILEEN A. GALLAGHER, J.:

{¶1} Defendant-appellant Gregory Tatum, pro se, appeals the trial court's denial of his motion to withdraw his guilty plea. For the following reasons, we affirm.

{¶2} On May 13, 2013, Tatum pled guilty to engaging in a pattern of corrupt activity, theft, securing records by deception, money laundering prohibitions, tampering with records and a mortgage broker certification offense. Tatum was sentenced to a prison term of five years for the pattern of corrupt activity offense. Lesser sentences were imposed on the remaining charges and all terms were ordered to be served concurrently. This appeal concerns only Tatum's conviction for the mortgage broker certification offense for which he was sentenced to a prison term of 12 months.

{¶3} On April 22, 2014, Tatum filed a postsentence motion to withdraw his guilty plea to the mortgage broker offense that was denied by the trial court. Tatum's brief on appeal presents three assignments of error but he offers only one argument to support all three. Therefore, we address his assignments of error together.

{¶4} Tatum contends that the trial court erred in denying his motion to withdraw his plea. He argues that his trial counsel failed to provide effective assistance of counsel because he failed to provide certain documentation to the court that would have demonstrated his innocence of the mortgage broker certification offense and that, due to this failure, his plea was not knowingly or intelligently entered.

{¶5} A defendant moving for a postsentence withdrawal of a guilty plea has the burden of establishing the existence of manifest injustice. *State v. Smith*, 49 Ohio St.2d

261, 361 N.E.2d 1324 (1977), paragraph one of the syllabus. A manifest injustice is a clearly or openly unjust act; an extraordinary and fundamental flaw in the plea proceeding. *State v. Sneed*, 8th Dist. Cuyahoga No. 80902, 2002-Ohio-6502, ¶ 13. 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. *Id.* However, “a postsentence withdrawal motion to withdraw a guilty plea is allowable only in extraordinary cases.” *State v. Conner*, 8th Dist. Cuyahoga No. 98084, 2012-Ohio-3579, ¶ 5, citing *Smith*.

{¶6} 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*, 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*, 17 Ohio App.3d 201, 202, 478 N.E.2d 1016 (6th Dist.1984); *State v. Xie*, 62 Ohio St.3d 521, 584 N.E.2d 715 (1992). 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*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶7} To prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate: (1) deficient performance by counsel, i.e., that counsel’s performance fell

below an objective standard of reasonable representation, and (2) that counsel's errors prejudiced the defendant, i.e., a reasonable probability that but for counsel's errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-688, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989), paragraphs two and three of the syllabus. "Reasonable probability" is "probability sufficient to undermine confidence in the outcome." *Strickland* at 694.

{¶8} In support of his motion to withdraw his plea, Tatum attached three exhibits: (1) a copy of a letter from the Ohio Department of Commerce dated February 12, 2004, authorizing him to work as a "loan officer" while his loan officer application was awaiting an administrative hearing, (2) a character reference letter dated March 2, 2004, pertaining to his application and (3) a copy of a letter from the Ohio Department of Commerce dated May 21, 2001, granting him a waiver to be seated for the real estate sales examination despite a prior felony conviction.

{¶9} Tatum argues that this documentary evidence established his innocence to the mortgage broker certification offense and that his trial counsel failed to provide an effective assistance of counsel by failing to utilize the information. We disagree.

{¶10} Tatum plead guilty to a violation of R.C. 1322.02(A)(1) which at the time of Tatum's offense provided:

No person, on the person's own behalf or on behalf of any other person, shall act as a mortgage broker without first having obtained a certificate of registration from the superintendent of financial institutions for every office to be maintained by the person for the transaction of business as a mortgage

broker in this state. A registrant shall maintain an office location in this state for the transaction of business as a mortgage broker in this state.

{¶11} Tatum’s argument that the February 12, 2004 letter from the Ohio Department of Commerce absolved him of any violation of R.C. 1322.02(A)(1) is without merit. The letter authorized Tatum to operate as a “loan officer” as opposed to a “mortgage broker.” R.C. 1322.01 provided separate definitions for the two terms.¹ Tatum plead guilty to a violation of R.C. 1322.02(A)(1) which criminalized acting as an uncertified mortgage broker. Conversely, at the time of his offenses, R.C. 1322.02(B) prohibited acting as an unlicensed “loan officer.” Because Tatum plead guilty to R.C. 1322.02(A)(1) as opposed to R.C. 1322.02(B) the Department of Commerce letter is of no relevance here.

{¶12} Furthermore, we note that even if the letter had temporarily authorized Tatum to operate as a mortgage broker in February of 2004 pending approval of his application to the Department of Commerce, Tatum has offered no evidence that this temporary status remained in effect during the relevant time period of his offenses: October 1, 2005 to January 31, 2006. Tatum’s other two exhibits fail to offer any relevant information pertaining to his offense.

{¶13} Finally, we note that contrary to Tatum’s arguments, the record reflects that his trial counsel notified the trial court of the existence of documentation that established Tatum was approved to close loans in the state of Ohio at the time of his plea to the

¹R.C. 1322.01 was amended on October 16, 2009, and the term “loan officer” was replaced with “loan originator” and provided a more detailed definition.

violation of R.C. 1322.02(A)(1). The trial court allowed Tatum and his attorney time to discuss the matter off the record and when the proceeding resumed, Tatum plead guilty to the offense.

{¶14} Tatum has failed to demonstrate ineffective assistance of counsel or the existence of manifest injustice. As such, the trial court did not err in denying his motion to withdraw his plea.

{¶15} Tatum's assignments of error are overruled.

{¶16} The judgment of the trial court is affirmed.

It is ordered that appellee recover from appellant the 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.

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EILEEN A. GALLAGHER, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and
EILEEN T. GALLAGHER, J., CONCUR