

[Cite as *State v. Congress*, 2015-Ohio-5264.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 102867

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**DRAYSHON CONGRESS**

DEFENDANT-APPELLANT

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**JUDGMENT:  
AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-13-579147-A

**BEFORE:** McCormack, J., Kilbane, P.J., and E.T. Gallagher, J.

**RELEASED AND JOURNALIZED:** December 17, 2015

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TIM McCORMACK, J.:

{¶1} Defendant-appellant, Drayshon Congress, appeals from a judgment of the trial court denying his motion to withdraw a guilty plea. For the following reasons, we affirm the trial court's judgment.

{¶2} On February 3, 2014, the trial court conducted a plea hearing. At the hearing, Congress pleaded guilty to an amended charge of murder in violation of R.C. 2903.02(A), which is an unclassified felony punishable by 15-years-to-life in prison. He also pleaded guilty to the attendant three-year firearm specification. The court found that Congress had knowingly and voluntarily entered a plea with a full understanding of his constitutional and trial rights, accepted his plea, and found Congress guilty.

{¶3} On March 4, 2014, the trial court held a sentencing hearing, during which the court considered the presentence investigation report and heard statements from Congress, defense counsel, the victim's family members, and the prosecutor. At this time, the prosecutor reminded the court of the incident, where Congress approached the victim seated in a car and fired approximately four or five shots, killing the victim. The prosecutor noted that the only sentence available to Congress in light of the charges is life in prison, with eligibility of parole after 18 years. Thereafter, the court sentenced Congress to 15-years-to-life in prison on the murder charge and 3 years in prison on the firearm specification, to be served consecutively. Before adjourning, the court inquired

if there were any motions to be addressed. In response, defense counsel requested the court waive court costs and fees.

{¶4} On October 17, 2014, seven months after sentencing, Congress filed a motion to withdraw his guilty plea, stating that he “feels that his counsel at the time [of the plea] did not adequately advise him of all of the ramifications of his plea” and, therefore, “a manifest injustice would be done should he not be permitted to proceed to trial.” The court denied his motion without a hearing.

{¶5} Congress now appeals the trial court’s denial of his postsentence motion to withdraw his guilty plea, raising one assignment of error: “the trial court erred when it did not hold a hearing on [Congress’s] motion to withdraw plea alleging failings of his trial counsel resulting in a manifest injustice.” In support of his position, Congress states that he “believes he was deprived of relevant information from his trial counsel that resulted in his plea and the resultant manifest injustice.”

{¶6} We find that Congress’s postsentence motion to withdraw his guilty plea is barred by res judicata. In a postconviction proceeding, res judicata bars the assertion of claims against a valid, final judgment of conviction that have been raised or could have been raised on appeal. *State v. Coley-Carr*, 8th Dist. Cuyahoga No. 101611, 2014-Ohio-5556, ¶ 11, citing *State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967), paragraph nine of the syllabus. Courts have repeatedly applied the doctrine of res judicata to postconviction motions to withdraw a guilty plea under Crim.R. 32.1.

*Coley-Carr*, citing *State v. Bryukhanova*, 6th Dist. Fulton No. F-10-002, 2010-Ohio-5504, ¶ 12.

{¶7} Here, Congress could have raised the claim regarding his guilty plea on direct appeal. He did not file a direct appeal. Rather, Congress elected to file a motion to withdraw his plea seven months after the imposition of his sentence. His claim regarding his plea is therefore now barred by res judicata.

{¶8} Even if the doctrine did not apply, we do not find the trial court abused its discretion when it denied Congress’s motion without holding a hearing.

{¶9} 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.” A defendant who seeks to withdraw a plea of guilty after the imposition of sentence 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.

{¶10} “Manifest injustice relates to some fundamental flaw in the proceedings which result[s] in a miscarriage of justice or is inconsistent with the demands of due process.” *State v. Williams*, 10th Dist. Franklin No. 03AP-1214, 2004-Ohio-6123, ¶ 5. Manifest injustice has been defined as a “clear or openly unjust act.” *State ex rel. Schneider v. Kreiner*, 83 Ohio St.3d 203, 208, 699 N.E.2d 83 (1998). Under the manifest injustice standard, a postsentence motion to withdraw a plea is permitted “only

in extraordinary cases.” *State v. Montgomery*, 2013-Ohio-4193, 997 N.E.2d 579, ¶ 61 (8th Dist.), citing *Smith* at 264.

{¶11} Generally, the trial court’s decision to deny a postsentence motion to withdraw a plea without a hearing is granted deference, particularly when the court conducted the original plea hearing. *State v. Hunter*, 8th Dist. Cuyahoga No. 99472, 2013-Ohio-5022, ¶ 18. Under these circumstances, the trial court is in the best position to assess the credibility of the defendant’s assertions. *Id.* Moreover, where the basis for denying the motion “is clearly warranted,” the trial court is not obligated to hold a hearing. *State v. Francis*, 104 Ohio St.3d 490, 2004-Ohio-6894, 820 N.E.2d 355, ¶ 51, citing *State v. Xie*, 62 Ohio St.3d 521, 584 N.E.2d 715 (1992). If the “record indicates that the movant is not entitled to relief and the movant has failed to submit evidentiary documents sufficient to demonstrate a manifest injustice,” the trial court need not hold a hearing on the motion to withdraw a guilty plea filed after imposition of the sentence. *State v. Russ*, 8th Dist. Cuyahoga No. 81580, 2003-Ohio-1001, ¶ 12.

{¶12} Our review of a trial court’s decision denying a postsentence motion to withdraw a guilty plea is limited to whether the trial court abused its discretion. *State v. Peterseim*, 68 Ohio App.2d 211, 428 N.E.2d 863 (8th Dist.1980). “Absent an abuse of discretion on the part of the trial court in making the ruling, its decision must be affirmed.” *Xie* at 527.

{¶13} Here, Congress filed a motion to withdraw his guilty plea seven months after he was sentenced. In his motion, he states only that he “believes he was deprived

of relevant information from his trial counsel” and, therefore, his plea resulted in a manifest injustice. Congress did not supplement his motion with any evidentiary documents to support his “belief,” nor does he offer any explanation of his belief or identify any “clear or openly unjust act.” *Kreiner*, 83 Ohio St.3d at 208, 699 N.E.2d 83 (1998). Moreover, a review of the record demonstrates that the trial court engaged in an extensive colloquy with Congress, and a fair reading of that record does not permit us to conclude that he entered his plea less than freely and voluntarily and with full knowledge of the ramifications of that plea.

{¶14} Accordingly, we find that Congress has failed to demonstrate a manifest injustice. The trial court therefore did not abuse its discretion in denying Congress’s postsentence motion to withdraw his guilty plea without holding a hearing.

{¶15} Congress’s sole assignment of error is overruled.

{¶16} 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 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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TIM McCORMACK, JUDGE

MARY EILEEN KILBANE, P.J., and  
EILEEN T. GALLAGHER, J., CONCUR