

[Cite as *State v. Ladson*, 2015-Ohio-5266.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102914

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ARTEZ L. LADSON

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-09-528306-A

BEFORE: S. Gallagher, J., Keough, P.J., and McCormack, J.

RELEASED AND JOURNALIZED: December 17, 2015

FOR APPELLANT

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ATTORNEYS FOR APPELLEE

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SEAN C. GALLAGHER, J.:

{¶1} This cause came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1. Appellant Artez Ladson appeals the trial court's denial of his postsentence motion to withdraw his guilty plea. Upon review, we affirm.

{¶2} On September 21, 2009, appellant was indicted with three counts of felonious assault in violation of R.C. 2903.11(A)(1) and three counts of felonious assault in violation of R.C. 2903.11(A)(2). Each of the charges included one- and three-year firearm specifications and a forfeiture of weapon specification.

{¶3} Appellant initially entered a plea of not guilty, and the case proceeded to a jury trial. In the midst of trial, appellant retracted his former plea and entered a plea of guilty to the charges. The trial court sentenced appellant to a total prison term of seven years. Three years later, appellant filed a delayed appeal that was dismissed as untimely.

{¶4} On March 10, 2015, appellant filed a motion to vacate his plea. Appellant claimed he entered a guilty plea "upon the intimidating tactics exerted upon him" and that his plea was not voluntarily and intelligently entered because it was made "under pressure." In an affidavit attached to his motion, appellant averred that he was pressured by his attorney to enter a guilty plea by a threat that he would do substantial prison time if he did not accept the plea bargain. The trial court denied the motion, and this appeal followed.

{¶5} Under his sole assignment of error, appellant claims the trial court abused its discretion when it denied his motion. Appellant claims his trial counsel tricked and

threatened him into pleading guilty to charges he did not commit by telling appellant that his codefendant was going to testify against him and that appellant would be facing over 20 years in prison when the attorney had a plea deal that would have him out in five years.

He states that his codefendant “shot and paralyzed a boy” and that appellant was unaware his codefendant was going to commit the crime and that he “was just riding.”

{¶6} Crim.R. 32.1 provides that “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.” The defendant has the burden of proof, and postsentence withdrawal of a guilty plea is only available in extraordinary cases to correct a manifest injustice. *State v. Smith*, 49 Ohio St.2d 261, 264, 361 N.E.2d 1324 (1977). We review the trial court’s decision under an abuse of discretion standard. *Id.* at 264.

{¶7} Appellant’s assertion in his motion that his plea was not entered intelligently and voluntarily is not supported by any reference to the plea hearing or other record evidence. Further, insofar as appellant implies that he received ineffective assistance of counsel, in that he claims he was pressured by his trial counsel into entering the plea, this argument could have been made on a direct appeal. Res judicata has been applied to bar the assertion of claims in a motion to withdraw a guilty plea that were or could have been raised at trial or on appeal. *State v. Ketterer*, 126 Ohio St.3d 448, 2010-Ohio-3831, 935 N.E.2d 9, ¶ 59. Thus, because appellant failed to file a timely appeal from his conviction and sentence in the underlying matter, his argument is barred by res judicata.

{¶8} We are also cognizant that appellant filed his motion almost five years after he was convicted and sentenced. Although Crim.R. 32.1 does not prescribe a time limitation for filing a postsentence motion to withdraw a plea, an undue delay in filing the motion adversely affects the credibility of the movant. *Smith* at 264.

{¶9} Appellant also claims the trial court should have held an evidentiary hearing on his motion. We find the trial court was not required to conduct a hearing on appellant's motion when his claims were barred by res judicata and appellant failed to establish a reasonable likelihood that a withdrawal of his plea was necessary to correct a manifest injustice. *See State v. Gilmore*, 8th Dist. Cuyahoga No. 97884, 2012-Ohio-3962, ¶ 23.

{¶10} Finding no abuse of discretion by the trial court, we overrule appellant's sole assignment of error.

{¶11} 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 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

KATHLEEN ANN KEOUGH, P.J., and
TIM McCORMACK, J., CONCUR