

[Cite as *State v. Miles*, 2015-Ohio-612.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 101790

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**MELVIN MILES**

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-90-261144-C

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

**RELEASED AND JOURNALIZED:** February 19, 2015

**FOR APPELLANT**

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**ATTORNEYS FOR APPELLEE**

Timothy J. McGinty  
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TIM McCORMACK, J.:

{¶1} Defendant-appellant, Melvin Miles, appeals from a judgment of the Cuyahoga County Court of Common Pleas that denied his motion to withdraw a guilty plea. For the following reasons, we affirm the trial court's judgment.

### I.

{¶2} In 1990, Miles and a codefendant, Darnell Wilson, were involved in a robbery incident during which Miles fired six or seven rounds from an AK-47 and killed the victim. Miles and Wilson were indicted for aggravated murder, aggravated robbery, and aggravated burglary. Wilson went to trial and was found guilty by a jury. Miles, pursuant to a plea agreement, pleaded guilty before a three-judge panel to aggravated murder with a felony-murder specification and a firearm specification. He was sentenced to a term of life imprisonment with parole eligibility after 20 years. He also received a three-year consecutive prison term for the firearm specification.

{¶3} In 2012, Miles filed a motion to withdraw his guilty plea, contending his plea was invalid because the trial court failed to advise him that his sentence included a five-year mandatory term of parole. The trial court denied his motion and this court affirmed the decision.<sup>1</sup> *State v. Miles*, 8th Dist. Cuyahoga Nos. 98980 and 99003, 2013-Ohio-1562.

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<sup>1</sup>We distinguished between postrelease control and parole, explaining that although the trial court must advise a defendant of postrelease control in the plea colloquy when it is part of the defendant's sentence, a defendant such as appellant who was sentenced for an unclassified felony was not subject to postrelease control and, therefore the trial court was not required to discuss postrelease control under Crim.R. 11(C)(2). As for parole, because parole was not certain to occur, the trial court was not required to explain it as part of the maximum possible penalty in a Crim.R. 11 colloquy. *Miles* at ¶ 13.

{¶4} On October 18, 2013, after having served more than 22 years, Miles appeared before the Parole Board for his first parole consideration hearing. The Board denied parole. It gave the following reasons:

Inmate pled guilty to aggravated murder for the violent and senseless killing of the victim during a burglary. He takes responsibility for this offense and has completed relevant programs to gain further insight into his conduct and positively change [sic]. His conduct has been good after receiving segregation for some tickets early in his incarceration. The Board recognizes his positive motivation and change. But, the aggravating factors in this case lead the Board to conclude that release would not further the interest of justice. After weighing relevant factors, including co-defendant parity, the Board does not consider the inmate suitable for release at this time and assesses a seven (7) year continuance.

{¶5} After the Parole Board denied his parole, Miles filed a second motion to withdraw his guilty plea. He claimed that, by denying him parole after he served 23 years — 20 years in addition to a three-year term for the firearm specification — the state, of which the Parole Board is an agent, breached the plea agreement. In its motion to withdraw the plea, Miles claimed that he entered into the plea agreement “to avoid the ‘parity’ of the harsher punishment associated with a jury trial and his co-defendant.” He alleged that the Parole Board’s seven-year continuance resulted in him being required to serve the same 30-year sentence imposed on his codefendant and, therefore, constituted a breach of his plea agreement. Miles claimed he should be allowed to withdraw his guilty plea as a result of the alleged breach.

{¶6} Although the trial court appeared to have doubts about the propriety of the Parole Board's decision, the trial court denied Miles's motion to withdraw the plea without a hearing. The court stated the following in its judgment entry:

Defendant's 3/04/2014 "Motion to Withdraw Guilty Plea Pursuant to Ohio Criminal rule 32.1" is denied without a hearing. Despite this fact, the court must make further comment. This defendant entered a guilty plea after intense negotiations and received a sentence of 23 years in prison. He was a very young man at the time and although the sentence was appropriate for the behavior and offense in question, it proved very difficult for him to enter a plea and accept the sentence. He is now eligible for parole but the parole board has rejected his request for release. The parole board has apparently based its denial on the following: 1) that the nature of the offense requires more punishment; and 2) that Mr. Miles should be imprisoned for the same length of time as his co-defendant who went to trial. Furthermore, it appears that there is no basis upon which to deny Mr. Miles a release on parole because of his conduct while in prison. By all accounts he has been well behaved. It should further be noted that Mr. Miles appeared before three experienced and knowledgeable elected jurists who accepted his plea and imposed a sentence approved of by the state of Ohio. It is this court's opinion that it is inappropriate for the parole board to deny Mr. Miles parole consideration for the reasons stated above. Indeed, it would appear to be a usurpation of authority to do so on this record.

## **II.**

{¶7} On appeal, Miles raises one assignment of error:

Miles was denied due process of law under the Sixth and Fourteenth Amendment to United States Constitution when the Ohio Adult Parole Authority invalidated his plea agreement with the State and the trial court failed to hold a hearing and address the matter after having determined that the parole board usurped their authority and no legitimate basis to deny parole appeared on the record.

{¶8} Crim.R. 32.1 governs withdrawals of guilty pleas. It states: “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.”

{¶9} 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.” *State v. Xie*, 62 Ohio St.3d 521, 527, 584 N.E.2d 715 (1992).

{¶10} We find no abuse of discretion in the trial court’s decision denying the motion to withdraw the guilty plea. The courts have held that a motion to withdraw a guilty plea is not a proper remedy for a claimed breach of a plea bargain by the Parole Board. As the Second District explained in *State v. Young*, 2d Dist. Greene No. 2000 CA 26, 2000 Ohio App. LEXIS 3714 (Aug. 18, 2000), the remedy of a claimed breach of a plea agreement by the Parole Board is not “to unravel the defendant’s plea bargain,” which, if it were done, would subject the defendant to the risk of a new indictment and the possibility of a longer sentence; rather, the defendant’s remedy is to enforce the plea bargain through an appropriate civil action. *Young* at \*2-3. See

also *State v. Hall*, 11th Dist. Trumbull No. 2003-T-0114, 2004-Ohio-6471, ¶ 53; *State v. Stephens*, 1st Dist. Hamilton No. C-020683, 2003-Ohio-6193, ¶ 8. This is because, as the Eleventh District explained in *Hall*, although the Parole Board is an agent of the state and bound by the plea agreement, the Parole Board is not a party in the criminal matter and the trial court had no authority over the Parole Board. *Hall* at ¶ 54.

{¶11} Miles argues the trial court abused its discretion by denying his motion to withdraw his guilty plea without a hearing. “Where the basis for denial of a motion to withdraw a guilty plea is clearly warranted, the trial court is not obligated to hold a hearing.” *Miles* at ¶ 14, citing *State v. Francis*, 104 Ohio St.3d 490, 2004-Ohio-6894, 820 N.E.2d 355, ¶ 51. Because a motion to withdraw the guilty plea is not a proper remedy for a claim of breach of plea agreement by the Parole Board, the trial court’s denial of the motion was clearly warranted and a hearing was unnecessary in this case.

{¶12} Accordingly, the trial court did not abuse its discretion in denying Miles’s motion to withdraw his guilty plea without a hearing. Because this appeal is limited to a review of the trial court’s denial of that motion, we express no opinion regarding the substance of Miles’s claim — whether there was a breach of his plea agreement when the Parole Board denied him parole after he served 23 years of his imposed sentence. That issue will await another day should the claim be appropriately presented.

{¶13} 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

SEAN C. GALLAGHER, P.J., and  
KATHLEEN ANN KEOUGH, J., CONCUR