[Cite as *State v. Kraatz*, 2016-Ohio-2640.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103515

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

WILLIAM KRAATZ

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-11-555719-A

BEFORE: E.A. Gallagher, J., Jones, A.J., and Boyle, J.

RELEASED AND JOURNALIZED: April 21, 2016

FOR APPELLANT

William Kraatz, pro se
Inmate #A624303
Warren Correctional Institution
P.O. Box 120
Lebanon, Ohio 45036

ATTORNEYS FOR APPELLEE

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

EILEEN A. GALLAGHER, J.:

{¶1} Defendant-appellant William Kraatz appeals the denial of his motion to withdraw his guilty pleas in the Cuyahoga County Court of Common Pleas. For the following reasons, we affirm.

Facts and Procedural Background

{¶2} On March 13, 2012, Kraatz plead guilty to 87 counts of pandering sexually oriented matter involving a minor, 38 counts of illegal use of a minor in nudity-oriented material or performance and one count of possessing criminal tools. The trial court imposed prison sentences of five years on each pandering count and five years for each count of illegal use of a minor. The counts were ordered to be served concurrently with the exception that the five-year sentences for the illegal use of a minor counts would be served consecutive to the five-year sentences for pandering. The trial court sentenced Kraatz to time served for the count of possessing criminal tools. Kraatz's aggregate prison sentence was ten years.

{¶3} Kraatz did not directly appeal his convictions and sentences. Instead, over three years later, on August 5, 2015, Kraatz filed a motion to withdraw his guilty pleas alleging that his pleas should be allowed to be withdrawn because he suffered manifest injustice in the form of his attorney coercing him into accepting a deal despite Kraatz being "on a mental health caseload" and promising that Kraatz would be sentenced to no more than "4-5 years." As such, Kraatz argued that he was prevented from entering a

knowing, intelligent and voluntary plea. The trial court denied Kraatz's motion and he appeals.

Law and Analysis

I. Motion to Withdraw

{¶4} Kraatz raises two assignments of error which we address together because they present the same legal argument– that the trial court erred in denying his motion to withdraw his pleas. The withdrawal of a guilty plea is governed by Crim.R. 32.1, which 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.

{¶5} Thus, pursuant to Crim.R. 32.1, Kraatz had the burden of establishing "manifest injustice" warranting the withdrawal of his guilty pleas. *State v. Nicholson*, 8th Dist. Cuyahoga No. 97873, 2012-Ohio-4591, ¶ 15; *State v. Smith*, 49 Ohio St.2d 261, 361 N.E.2d 1324 (1977), paragraph one of the syllabus.

{¶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 defendant's assertions in support of the motion are matters to be resolved by that court. *Smith*, paragraph two of the syllabus. We, therefore, review a trial court's decision to deny a defendant's postsentence motion to withdraw a guilty plea under an abuse of discretion standard. *State v. Britton*, 8th Dist. Cuyahoga No. 98158, 2013-Ohio-99, ¶ 17, citing *Smith* at *id.* and *State v. Peterseim*, 68 Ohio App.2d 211, 214, 428 N.E.2d 863 (8th

Dist.1980). Unless it is shown that the trial court acted unreasonably, arbitrarily or unconscionably in denying a defendant's motion to withdraw his pleas, there is no abuse of discretion. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶7} Manifest injustice is a "'clear or openly unjust act,' * * * 'an extraordinary and fundamental flaw in the plea proceeding.'" *Nicholson* at *id.*, quoting *State v. Sneed*, 8th Dist. Cuyahoga No. 80902, 2002-Ohio-6502, ¶ 13. It "'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.'" *Nicholson* at *id.*, quoting *Sneed* at *id*. "Manifest injustice is an 'extremely high standard'; a defendant may withdraw a guilty plea only in 'extraordinary cases.'" *State v. Rogers*, 8th Dist. Cuyahoga No. 99246, 2013-Ohio-3246, ¶ 27, quoting *State v. Beachum*, 6th Dist. Sandusky Nos. S-10-041 and S-10-042, 2012-Ohio-285, ¶ 23. The requisite showing of manifest injustice must be based on specific facts contained in the record or supplied through affidavits submitted with the motion. *Cleveland v. Dobrowski*, 8th Dist. Cuyahoga No. 96113, 2011-Ohio-6071, ¶ 14, citing *State v. Gegia*, 157 Ohio App.3d 112, 2004-Ohio-2124, 809 N.E.2d 673, ¶ 8 (9th Dist.); *State v. Barrett*, 10th Dist. Franklin No. 11AP-375, 2011-Ohio-4986, ¶ 15. A self-serving affidavit by the moving party is generally insufficient to demonstrate manifest injustice. *Richmond Hts. v. McEllen*, 8th Dist. Cuyahoga No. 99281, 2013-Ohio-3151, ¶ 14, citing *State v. Simmons*, 8th Dist. Cuyahoga No. 91062, 2009-Ohio-2028, ¶ 30.

{¶8} Kraatz argues that manifest injustice exists here in that his attorney coerced him into entering a plea by threatening him with a life sentence when he should have known that Kraatz had been on the "mental health caseload" and promising that he would not receive a sentence greater than 4-5 years. Kraatz argues that his pleas were not knowing, intelligent and voluntary and, therefore, the trial court erred and violated Crim.R. 11 in accepting the plea.

{¶9} Kraatz's arguments are deficient in several respects. To the extent that his Crim.R. 11 and ineffective assistance of counsel arguments could have been raised on direct appeal based on facts in the record, Kraatz's arguments are 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. *Id.*; *State v. Congress*, 8th Dist. Cuyahoga No. 102867, 2015-Ohio-5264, ¶ 6-10.

{¶10} Furthermore, Kraatz has failed to provide this court with a transcript of his plea hearing, thus precluding any meaningful review of alleged Crim.R. 11 violations. Without any record to review, we must presume regularity in the proceedings of the trial court. *State v. Bruce*, 8th Dist. Cuyahoga No. 96365, 2011-Ohio-2937; *State v. Bleehash*, 5th Dist. Licking No. 05CA123, 2006-Ohio-4580.

{¶11} The portion of Kraatz's arguments regarding threats or promises made by his attorney that rely upon evidence dehors the record would not be barred by res judicata. However, Kraatz has failed to attach affidavits or other evidence to support the arguments raised in his motion and on appeal. While Crim.R. 32.1 does not specifically require a defendant to produce a sworn affidavit, the defendant does have the burden of establishing the existence of manifest injustice.

{¶12} Furthermore, even if Kraatz had properly supported his arguments with evidence a review of his ineffective assistance of counsel argument would almost certainly require, at the very least, the transcript of his plea hearing. He has failed to provide a record of his plea hearing, which would allow this court to judge the veracity of his claims. *State v. Roberts*, 8th Dist. Cuyahoga Nos. 93439 and 93440, 2010-Ohio-1436, ¶ 17. We note that this court has previously held that a "[d]efendant's own self-serving declarations or affidavits alleging a coerced guilty plea are insufficient to rebut the record on review which shows that his plea was voluntary." *State v. Shaw*, 8th Dist. Cuyahoga No. 102802, 2016-Ohio-923, ¶ 10, quoting *State v. Kapper*, 5 Ohio St.3d 36, 448 N.E.2d 823 (1983). Additionally, the mere fact that a defendant suffered from a mental illness or was taking psychotropic medication under medical supervision when he entered a guilty plea is not an indication that his plea was not knowing and voluntary, that the defendant lacked mental capacity to enter a plea or that the trial court otherwise erred in accepting the defendant's guilty plea. *See, e.g., State v. Robinson*, 8th Dist. Cuyahoga No. 89136, 2007-Ohio-6831, ¶ 18; *State v. Harney*, 8th Dist. Cuyahoga No. 71001, 1997

Ohio App. LEXIS 1768, *4 (May 1, 1997); *State v. Bowen*, 8th Dist. Cuyahoga Nos. 70054 and 70055, 1996 Ohio App. LEXIS 5612, *9 (Dec. 12, 1996); *State v. McDowell*, 8th Dist. Cuyahoga No. 70799, 1997 Ohio App. LEXIS 113, *4 (Jan. 16, 1997).

{¶13} On these facts we cannot say that the trial court abused its discretion in denying Kraatz's motion to withdraw his guilty pleas.

{¶14} Kraatz's assignments of error are overruled.

{¶15} 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.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

_____

EILEEN A. GALLAGHER, JUDGE

LARRY A. JONES SR., A.J., and
MARY J. BOYLE, J., CONCUR