

[Cite as *State v. McArthur*, 2017-Ohio-1373.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104862

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

TIRELLE MCARTHUR

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-15-599027-A

BEFORE: Keough, A.J., S. Gallagher, J., and Laster Mays, J.

RELEASED AND JOURNALIZED: April 13, 2017

APPELLANT

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ATTORNEYS FOR APPELLEE

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KATHLEEN ANN KEOUGH, A.J.:

{¶1} This appeal is before the court on the accelerated docket pursuant to App.R. 11.1 and Loc. App.R. 11.1. The purpose of an accelerated appeal is to allow this court to render a brief and conclusory opinion. *State v. Priest*, 8th Dist. Cuyahoga No. 100614, 2014-Ohio-1735, ¶ 1.

{¶2} Defendant-appellant, Tirelle McArthur, appeals the trial court's decision denying his "motion to correct manifest injustice." For the reasons that follow, we affirm.

{¶3} In September 2015, McArthur was named in a six-count indictment charging him with two counts each of aggravated robbery with one- and three-year firearm specifications, notice of prior conviction, and repeat violent offender specification; kidnapping, with one- and three-year firearm specifications, notice of prior conviction, and repeat violent offender specification; and having weapons under disability.

{¶4} On October 8, 2015, McArthur was referred to the court psychiatric clinic pursuant to R.C. 2945.371 for a competency and sanity evaluation. On November 16, 2015, the court held a hearing and noted that Dr. Lubna Grewal from the court's psychiatric clinic was unable to render an opinion regarding McArthur's competence. Therefore, pursuant to R.C. 2945.371(C) and (D), the court ordered McArthur to Northcoast Behavioral Healthcare for an inpatient competency evaluation.

{¶5} In December 2015, the trial court conducted a plea hearing. Prior to accepting McArthur's plea, the trial court noted that the competency report from the

court's psychiatric department, dated November 16, 2015, determined that McArthur was competent. Both the state and McArthur's defense attorney stipulated to the report and to the finding of competency. No mention was made regarding any report from Northcoast Behavioral Healthcare.

{¶6} Following the stipulation, the trial court properly engaged in the requisite Crim.R. 11 plea colloquy with McArthur and accepted his guilty plea to two amended counts of aggravated robbery, with notice of prior conviction. All other charges were nolle. The court imposed a three-year prison sentence and ordered restitution. McArthur did not file a direct appeal.

{¶7} On May 31, 2016, McArthur filed a "motion to correct a manifest injustice," arguing that he was never discharged from Northcoast Behavioral Healthcare because Dr. Cortney A. Kohberger did not sign the competency report that declared him competent and ordered his discharge. Attached to his motion was Dr. Kohberger's report. The trial court summarily denied McArthur's motion.

{¶8} McArthur appeals, contending in his sole assignment of error that his due process rights were violated when the trial court denied his "motion to correct manifest injustice" when he provided the court with documentation confirming that Northcoast Behavioral Healthcare did not discharge him on December 15, 2015. Within the assigned error, McArthur raises an ineffective assistance of counsel claim for stipulating to the unsigned competency report.

{¶9} McArthur’s “motion to correct manifest injustice” asserted that his plea should be withdrawn, or at the very least, a hearing should be held on his motion pursuant to Crim.R. 32.1, because the competency evaluation prepared by Dr. Courtney A. Kohberger on December 15, 2015, was not signed and thus any stipulation to the report was void. Because of this omission, he contended that “numerous issues now present itself in the form of Due Process Violations of it all, including Fraud, Ineffective of Counsel, and Equal Protection of the Law issues.”

{¶10} It appears that McArthur’s motion is actually a postsentence motion to withdraw his plea. 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.” “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. Ruby*, 9th Dist. Summit No. 23219, 2007-Ohio-244, ¶ 11. “Under the manifest injustice standard, a postsentence withdrawal motion is allowable only in extraordinary cases.” *State v. Montgomery*, 2013-Ohio-4193, 997 N.E.2d 579, ¶ 61 (8th Dist.), citing *State v. Smith*, 49 Ohio St.2d 261, 264, 361 N.E.2d 1324 (1977). However, res judicata will bar a postsentence motion to withdraw a guilty plea if issues raised in the motion could have been raised on direct appeal. *State v. Ketterer*, 126 Ohio St.3d 448, 2010-Ohio-3831, 935 N.E.2d 9, ¶ 59.

{¶11} In this case, McArthur’s motion is barred by res judicata because the issues raised — an unsigned competency report and ineffective assistance of counsel — existed at the time of his plea, and the report that McArthur relies upon was in existence and available to him in time to support a direct appeal. Moreover, even addressing his arguments raised in his motion, McArthur fails to explain the impact of Dr. Kohberger’s lack of signature on his copy of his competency report. He makes no challenge to the authenticity of the report or the findings made in the report. Additionally, he cannot show that he was prejudiced by his counsel’s performance at the time of the plea.

{¶12} Although McArthur argues on appeal that his counsel was ineffective for stipulating to Dr. Kohberger’s unsigned report, the record reveals that McArthur’s counsel stipulated to the November 16, 2015 report. This court recognizes that the trial court inadvertently referenced and accepted the wrong report when it found McArthur competent. However, McArthur made no argument in his motion with the trial court or now on appeal regarding this error.

{¶13} Finally, McArthur makes no argument whatsoever that he did not enter a knowing, voluntary, and intelligent plea. Additionally, Dr. Kohberger’s report, which McArthur attached to his motion, found McArthur competent to stand trial. Accordingly, this is not the extraordinary case where the trial court should have granted McArthur’s postsentence motion to withdraw his plea to correct a manifest injustice. The assignment of error is overruled.

{¶14} 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.

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

KATHLEEN ANN KEOUGH, ADMINISTRATIVE JUDGE

SEAN C. GALLAGHER, J., and
ANITA LASTER MAYS, J., CONCUR