

[Cite as *State v. Cooper*, 2017-Ohio-541.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104797

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DWAYNE T. COOPER

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-83-183919-ZA

BEFORE: S. Gallagher, J., Kilbane, P.J., and Stewart, J.

RELEASED AND JOURNALIZED: February 16, 2017

FOR APPELLANT

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SEAN C. GALLAGHER, J.:

{¶1} Appellant Dwayne T. Cooper, pro se, appeals the trial court's denial of his motion to withdraw guilty plea. Upon review, we affirm the decision of the trial court.

{¶2} After being charged under a 16-count indictment, on October 26, 1983, appellant pled guilty to Counts 7 and 14, as amended, for aggravated murder in violation of R.C. 2903.01, with the specifications deleted, and murder in violation of R.C. 2903.02.

The remaining charges were nolle. The trial court sentenced appellant to 15 years to life in prison for the murder, and to life in prison for the aggravated murder. The imposed sentences were run consecutively. Appellant did not appeal his convictions or sentence.¹

{¶3} Relevant to this appeal, on February 19, 2015, the trial court issued a journal entry that provided as follows:

The court is in receipt of the Ohio Adult Parole Authority's 2/12/2015 notice of offender's hearing before the parole board. The court imposed sentence after due consideration of all relevant factors and opposes any reduction or modification of sentence by the Ohio Parole Board from that which was imposed.

{¶4} Thereafter, on June 29, 2016, appellant filed a pro se motion to withdraw guilty plea pursuant to Crim.R. 32.1. Appellant indicated that he was denied parole by

¹ Appellant filed a motion to withdraw his plea on December 17, 2009, that was denied by the trial court on December 23, 2010.

the Ohio Parole Board and argued that the trial court's journal entry opposing "any reduction or modification of sentence by the Ohio Parole Board" constituted a breach of the plea agreement. The trial court denied the motion, and this appeal followed.

{¶5} Appellant's sole assignment of error claims his constitutional rights were violated when the trial court invalidated his plea agreement by recommending he never receive parole.

{¶6} Appellant states that the sentence he received was with parole eligibility after 20 years. Following the trial court's February 19, 2015 journal entry, appellant appeared for a hearing before the parole board. He was denied parole. He references the Ohio Parole Board's Decision and Minutes, which states as follows:

Offender is serving a life sentence for two offenses where the lives of the victims were taken. The offenses were very violent offenses where multiple offenders attacked multiple victims. Offender admitted his involvement in these offenses. Offender has a prior history of other violent offenses and he has violent behavior while incarcerated. Given the offender's extensive criminal history as well as his lack of programming, he is not suitable for release.

{¶7} Appellant argues that the trial court judge substituted her opinion for that of the sentencing judge, that the trial court breached the plea agreement, and that he has been denied the benefit of his plea agreement. Therefore, he asserts he should be allowed to withdraw his plea.

{¶8} 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.

{¶9} A plea agreement is a contract between the state and a criminal defendant. *State v. Grove*, 8th Dist. Cuyahoga No. 103042, 2016-Ohio-2721, ¶ 36. The court was not a party to the agreement. Further, parole was not guaranteed, and the parole board had the discretion to deny parole.

{¶10} It is well settled that parole is not a certainty and that “[e]ven after a prisoner has met the minimum eligibility requirements, parole is not guaranteed[.]” *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, 893 N.E.2d 462, ¶ 37. However, “the Adult Parole Authority ‘has wide-ranging discretion in parole matters’ and may refuse to grant release to an eligible offender.” *Id.*, quoting *Layne v. Ohio Adult Parole Auth.*, 97 Ohio St.3d 456, 2002-Ohio-6719, 780 N.E.2d 548, ¶ 28. Furthermore, there is no inherent or constitutional right to be released on parole before the expiration of a valid sentence, and an inmate cannot claim a violation of due process with respect to a parole determination. *Festi v. Ohio Adult Parole Auth.*, 10th Dist. Franklin No. 04AP-1372, 2005-Ohio-3622, ¶ 14; *State v. Ferguson*, 8th Dist. Cuyahoga No. 82984, 2004-Ohio-487, ¶ 9.

{¶11} Contrary to appellant's argument, the trial court did not invalidate the plea agreement. The judge expressed that she opposed any reduction or modification of sentence by the parole board. The parole board was not bound by the suggestion of the trial court judge. Under R.C. 2967.03, the decision of the parole board is discretionary. *State ex rel. Keith v. Ohio Adult Parole Auth.*, 141 Ohio St.3d 375, 2014-Ohio-4270, 24 N.E.3d 1132, ¶ 19. The parole board made the ultimate determination and had sufficient rationale for its parole decision.

{¶12} Upon review, we find the trial court properly denied appellant's motion. Appellant's sole assignment of error is overruled.

{¶13} 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.

SEAN C. GALLAGHER, JUDGE

MARY EILEEN KILBANE, P.J., and
MELODY J. STEWART, J., CONCUR