

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C. A. No. 08CA009466

Appellee

v.

DORIS THOMPSON

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 06CR069914

Appellant

DECISION AND JOURNAL ENTRY

Dated: May 18, 2009

WHITMORE, Judge.

{¶1} Defendant-Appellant, Doris B. Thompson, appeals from the judgment of the Lorain County Court of Common Pleas, denying her motion to withdraw her guilty plea and sentencing her to a term of prison. This Court affirms.

I

{¶2} On February 2, 2006, a grand jury indicted Thompson on ten counts of forgery, in violation of R.C. 2913.31(A)(1), one count of misuse of a credit card, in violation of R.C. 2913.21, and one count of theft, in violation of R.C. 2913.02(A)(3). All of the foregoing charges stemmed from Thompson abusing her position as an in-home caretaker for Lorraine Clark by repeatedly forging Clark’s name and taking Clark’s funds without permission. On March 2, 2007, Thompson pleaded guilty to all of the foregoing charges. The trial court ordered that a pre-sentence investigation (“PSI”) report be completed and postponed Thompson’s sentencing.

{¶3} On August 7, 2008, Thompson appeared before the trial court for sentencing and made an oral motion to withdraw her plea. The trial court denied Thompson’s motion and sentenced her to eighteen months in prison and restitution. Thompson now appeals from the trial court’s judgment and raises two assignments of error for our review.

II

Assignment of Error Number One

“THE TRIAL COURT ERRED WHEN IT DENIED DEFENDANT/APPELLANT’S MOTION TO WITHDRAW HER GUILTY PLEA.”

{¶4} In her first assignment of error, Thompson argues that the trial court erred in denying her motion to withdraw her guilty plea. Specifically, Thompson argues that she did not knowingly, intelligently, and voluntarily enter her plea because her plea was the result of her belief that she only would receive community control as a sanction. We disagree.

{¶5} Where a defendant seeks to withdraw her plea prior to sentencing, the general rule is that the motion should be freely and liberally granted. *State v. Keith*, 9th Dist. Nos. 07CA009263, 07CA009267, 07CA009268, 07CA009269, 07CA009270, 07CA009271 & 07CA009272, 2008-Ohio-3724, at ¶6, citing *State v. Xie* (1992), 62 Ohio St.3d 521, 526-27. Even so, it is the defendant’s burden to demonstrate “a reasonable and legitimate basis for withdrawing a plea.” *State v. DeWille* (Nov. 4, 1992), 9th Dist. No. 2101, at *1. “One who enters a guilty plea has no right to withdraw it.” *Keith* at ¶6, quoting *Xie*, 62 Ohio St.3d at 526. The trial court has the discretion to determine whether a defendant has provided a reasonable and legitimate basis to withdraw her plea, as well as to determine whether the circumstances justify a withdrawal. *Keith* at ¶7. An abuse of discretion is more than an error of judgment; it means that the trial court was unreasonable, arbitrary, or unconscionable in its ruling. *Blakemore v.*

Blakemore (1983), 5 Ohio St.3d 217, 219. This Court has held that a trial court does not abuse its discretion in denying a motion to withdraw a pre-sentence plea when a defendant had competent counsel, a full Crim.R. 11 hearing prior to the acceptance of the plea, and a hearing on her motion to withdraw. *State v. Mack*, 9th Dist. No. 05CA0024-M, 2005-Ohio-6325, at ¶8.

{¶6} Thompson argues that the trial court erred in refusing to allow her to withdraw her plea because she was “misled.” Thompson argues that she was led to believe that she would be sentenced solely upon the facts in existence at the time of her plea hearing and further led to believe that, based on those facts, she would receive community control. We disagree.

{¶7} The record reflects that the trial court informed Thompson at her plea hearing of the possible range of sentences that she could receive. The trial court told Thompson that she could receive up to twelve months on each count of forgery and up to eighteen months on each count of misuse of a credit card and theft. The written plea agreement that Thompson signed also confirmed that she could receive those maximum terms on each count for a possible maximum sentence of thirteen years in prison. During Thompson’s plea hearing, the trial court explained that it could either: (1) sentence her to community control; (2) sentence her to prison and have her serve her full term; or (3) sentence her to a prison term, but grant her judicial release before the expiration of her term. The trial court never indicated which of the foregoing options it was going to impose. Thompson indicated that she understood each of these options. Furthermore, Thompson indicated that she was entering her plea “without any promises or benefits being given to [her].” Neither the trial court, nor the State, promised or even implied that Thompson would receive community control. At the end of Thompson’s plea hearing, the trial court informed Thompson that it was asking for a PSI report and that it would rely on the

contents of the report in sentencing Thompson. Accordingly, Thompson also was aware that the contents of her PSI report could impact the trial court's sentencing decision.

{¶8} “In determining whether a guilty plea was entered into voluntarily, intelligently, and knowingly, we look to the totality of the circumstances.” *Mack* at ¶16, citing *State v. Nero* (1990), 56 Ohio St.3d 106, 108. Here, Thompson was represented by counsel and agreed to plead guilty after being fully informed of the effect of such a plea. Before accepting Thompson's plea, the trial court explained all of the possible sanctions and the possible maximum sentence that she could receive as a result of pleading guilty. Thompson indicated that she understood her sentence could be up to thirteen years in prison. Thompson does not argue that her trial counsel was incompetent, that the trial court failed to afford her a full Crim.R. 11 hearing, or that she was deprived of a hearing on her motion to withdraw her plea. See *Mack* at ¶8. The fact that Thompson received eighteen months in prison rather than a sentence of community control does not transform the nature of her plea. The record supports the conclusion that Thompson entered her plea voluntarily, intelligently, and knowingly. See *id.* at ¶17. Accordingly, the trial court did not abuse its discretion in denying Thompson's motion to withdraw her plea. Thompson's first assignment of error lacks merit.

Assignment of Error Number Two

“THE TRIAL COURT ERRED WHEN IT IMPROPERLY SENTENCED DEFENDANT/APPELLANT.”

{¶9} In her second assignment of error, Thompson argues that the trial court erred in sentencing her based on an inaccurate PSI report. Specifically, Thompson argues that the trial court should not have relied upon the PSI report in sentencing her because: (1) it contained factual inaccuracies and facts that went beyond the circumstances of her current offenses; and (2) the additional facts contained in the PSI report were not proven beyond a reasonable doubt.

{¶10} Pursuant to App.R. 9(B) and Loc.R. 5(A), it is the duty of the appellant to ensure that the record necessary to determine the appeal is filed with the appellate court. *State v. Williams* (1995), 73 Ohio St.3d 153, 160-61. “The presentence report is among the parts of the record that must be included when the appeal is filed.” *State v. Barnes*, 9th Dist. No. 06CA009034, 2007-Ohio-2460, at ¶5. “If the record is incomplete, the appellate court must presume the regularity of the trial court’s actions[.]” *Id.* at ¶5.

{¶11} The record does not contain Thompson’s PSI report. On January 27, 2009, Thompson filed a motion to supplement the record in this Court with a copy of her PSI report. Thompson’s own motion provided that the PSI report is “ultimately necessary for the proper adjudication of her appeal.” On March 12, 2009, this Court granted Thompson’s motion to supplement and gave her ten days from the journalization of the order to file her PSI report with this Court. Thompson never filed her PSI report. Because the record does not contain Thompson’s PSI report, this Court must presume regularity and conclude that the trial court did not err in relying upon the PSI report to sentence Thompson. *Id.* at ¶5. Thompson’s second assignment of error lacks merit.

III

{¶12} Thompson’s assignments of error are overruled. The judgment of the Lorain County Court of Common Pleas is affirmed.

Judgment affirmed.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

BETH WHITMORE
FOR THE COURT

DICKINSON, P. J.
BELFANCE, J.
CONCUR

APPEARANCES:

KENNETH N. ORTNER, Attorney at Law, for Appellant.

DENNIS WILL, Prosecuting Attorney, and BILLIE JO BELCHER, Assistant Prosecuting Attorney, for Appellee.