

STATE OF OHIO                    )  
  )ss:  
COUNTY OF SUMMIT            )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C. A. No.       24487

Appellee

v.

JOEL WESLEY RHOTEN

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF SUMMIT, OHIO  
CASE No.       CR 04 07 2338

Appellant

DECISION AND JOURNAL ENTRY

Dated: July 8, 2009

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BELFANCE, Judge.

{¶1} Defendant-Appellant Joel W. Rhoten appeals from the Summit County Court of Common Pleas’ denial of his motion to withdraw his guilty plea. For reasons set forth below, this Court affirms.

I.

{¶2} In 2004, Rhoten was indicted for two counts of aggravated murder, each with firearm and death penalty specifications, and two counts of attempted aggravated murder, each with firearm specifications. Subsequently, Rhoten pled guilty to the charges and was sentenced to life imprisonment without the possibility of parole. Rhoten did not file a direct appeal.

{¶3} In 2005, Rhoten filed a petition to vacate his conviction pursuant to R.C. 2953.21 arguing that his counsel was ineffective for failure to present mitigating evidence. Essentially it was Rhoten’s contention that if his case would have proceeded to trial it was possible the jury may have considered evidence which may have caused the jury to acquit him of the charged

offenses and instead convict him of voluntary manslaughter and aggravated assault. Rhoten's petition was denied, and Rhoten did not appeal.

{¶4} In 2008, Rhoten moved to withdraw his guilty plea arguing that the evidence available would not have supported a conviction for aggravated murder and that his counsel was ineffective, as his counsel failed to present evidence that would have supported a conviction for voluntary manslaughter. The trial court denied Rhoten's motion, and it is from this denial that Rhoten now appeals raising two assignments of error.

## II.

### ASSIGNMENT OF ERROR I.

"THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION BY DENYING APPELLANT'S MOTION TO WITHDRAW HIS GUILTY PLEA EVEN THOUGH HE DEMONSTRATED A MANIFEST INJUSTICE EXISTS REQUIRING CORRECTION, CONSEQUENTLY VIOLATING APPELLANT'S FUNDAMENTAL RIGHT TO DUE PROCESS AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 16 OF THE OHIO CONSTITUTION."

### ASSIGNMENT OF ERROR II.

"APPELLANT'S RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WAS VIOLATED WHERE HIS TRIAL COUNSELS FAILED TO CHAMPION HIS CAUSE SKILLFULLY IN VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 10 OF THE OHIO CONSTITUTION."

{¶5} Pursuant to Crim.R. 32.1, "\* \* \* 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." (Internal quotations and citation omitted.) *State v. Griffin*, 9th Dist. No. 24179, 2009-Ohio-1212, at ¶10. Our review is limited to an analysis of whether the trial court abused its discretion in denying

Rhoten’s motion. See *id.* at ¶11. An abuse of discretion requires that the trial court’s action was “unreasonable, arbitrary or unconscionable.” *Id.*, citing *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶6} We have stated that “[t]he doctrine of *res judicata* precludes any defense or any claimed lack of due process that was raised or could have been raised by the defendant at trial, or on an appeal from that judgment.” *State v. Rexroad*, 9th Dist. No. 22214, 2004-Ohio-6271, at ¶8. We have also concluded that a defendant’s failure “to directly appeal from his conviction and sentence does not prevent the application of the doctrine of *res judicata*.” *Id.*

{¶7} Here Rhoten did not file a direct appeal, but did file a motion for postconviction relief, arguing issues similar to those he raised in his motion to withdraw his guilty plea; all of Rhoten’s arguments revolve around Rhoten’s belief that he could have been convicted of voluntary manslaughter if his case had proceeded to trial. In his motion for postconviction relief, the trial court considered Rhoten’s argument, in the context of ineffective assistance of counsel, and found the argument to be without merit. Furthermore, Rhoten could have raised each of the arguments he now raises, in his direct appeal. As Rhoten did not file a direct appeal and has raised similar arguments to those he raised in his motion for postconviction relief, the doctrine of *res judicata* is applicable. See *id.* Therefore, we cannot conclude that the trial court abused its discretion in denying Rhoten’s motion.

### III.

{¶8} In light of the foregoing, we affirm the judgment of the Summit County Court of Common Pleas.

Judgment affirmed.

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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 Summit, 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.

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EVE V. BELFANCE  
FOR THE COURT

CARR, J.  
DICKINSON, P. J.  
CONCUR

APPEARANCES:

JOEL W. RHOTEN, pro se, Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellee.