

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C. A. No. 25420

Appellee

v.

JOSE ROMERO

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE Nos. CR 05-01-0262
 CR 06-04-1475
 CR 09-03-0740

Appellant

DECISION AND JOURNAL ENTRY

Dated: March 9, 2011

WHITMORE, Judge.

{¶1} Defendant-Appellant, Jose Romero, appeals from his convictions in the Summit County Court of Common Pleas. This Court affirms.

I

{¶2} Romero was indicted in three separate cases in 2005, 2006, and 2009, respectively. In Case No. 2005-01-0262, Romero was charged with nonsupport of dependents, in violation of R.C. 2919.21(A)(2)/(B). In Case No. 2006-04-1475, Romero was charged with nonsupport of dependents, in violation of R.C. 2919.21(G)(1). The trial court placed both the 2005 and 2006 cases on the inactive docket and issued arrest warrants for Romero due to his failure to appear. In 2009, a supplemental indictment added a charge for Romero’s failure to appear, in violation of R.C. 2937.29, to Case No. 2006-04-1475. In Case No. 2009-03-0740, Romero was charged with nonsupport of dependents, in violation of R.C. 2919.21(G)(1). After

his 2009 indictment, Romero's 2005 and 2006 cases were returned to the active docket, and all three matters were set for trial.

{¶3} The trial court appointed an interpreter for Romero, and he ultimately decided to plead guilty. On April 1, 2010, the trial court held a plea hearing and the parties filed a written plea of guilt. In exchange for Romero pleading guilty to failure to appear and one count of nonsupport in Case No. 2005-01-0262, the State dismissed Case No. 2009-03-0740 and the remaining nonsupport count in Case No. 2006-04-1475. On April 28, 2010, the trial court sentenced Romero to a total of sixty days in jail and a suspended prison sentence.

{¶4} On April 30, 2010, Romero filed a pro se motion to withdraw his guilty pleas. The trial court denied Romero's motion on May 4, 2010, and Romero appealed from the court's judgment. This Court appointed Romero appellate counsel upon the motion of the attorney who filed his notice of appeal.

{¶5} On September 29, 2010, Romero's appointed counsel filed a brief pursuant to *Anders v. California* (1967), 386 U.S. 738, and requested permission to withdraw as Romero's counsel. Romero did not respond to his counsel's *Anders* Brief or request to withdraw as counsel, and the State did not file a brief on its own behalf.

II

{¶6} Romero's counsel raises one assignment of error in which he alleges that the trial court erred by not granting Romero's motion to withdraw his plea on the basis that he was not fully advised of his rights. The assignment of error also alleges that Romero's trial counsel was ineffective because he failed to fully advise Romero of his rights. Romero's appellate counsel asserts, however, that the record does not contain a meritorious claim for appeal. Upon a review of the record, we agree with Romero's counsel that no meritorious claim exists.

“Pursuant to 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. In a post-sentence motion, the burden of establishing the existence of a manifest injustice is upon the individual seeking to withdraw the plea. A manifest injustice has been defined as a clear or openly unjust act. Under the manifest injustice standard, a post-sentence withdrawal motion is allowable only in extraordinary cases.” (Internal citations and quotations omitted.) *State v. Brown*, 9th Dist. No. 24831, 2010-Ohio-2328, at ¶9.

This Court reviews a trial court’s determination that a defendant failed to demonstrate a manifest injustice for an abuse of discretion. *Id.* at ¶8.

{¶7} To prove an ineffective assistance claim, a defendant must show that: (1) counsel’s performance was deficient to the extent that “counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment” and (2) “the deficient performance prejudiced the defense.” *Strickland v. Washington* (1984), 466 U.S. 668, 687. To demonstrate prejudice, “defendant must demonstrate that there is a reasonable probability that, but for his counsel’s error, he would not have pleaded guilty and would have insisted on going to trial.” *State v. Evans*, 9th Dist. No. 09CA0049-M, 2010-Ohio-3545, at ¶4.

{¶8} Romero sought to withdraw his guilty plea on the basis that he did not have an interpreter present at all times, his attorney was more concerned with his “political aspirations” than Romero’s case, and his attorney misled him into believing that there would be no consequences to his pleading guilty because his deportation was imminent. Neither Romero, nor his appellate counsel, cited to any portion of the record in support of the foregoing arguments. We separately address the arguments regarding Romero’s interpreter and his attorney.

{¶9} The record reflects that Romero had an interpreter with him during the entire plea hearing. The trial court gave Romero’s interpreter time to interpret and specifically instructed the interpreter to “[m]ake sure [he] interpret[ed] everything that’s said in the courtroom here

today.” The interpreter stopped the proceedings whenever he needed a statement repeated and he also asked a question on Romero’s behalf. Romero’s attorney admitted at the plea hearing that, although he and Romero met with the interpreter the day before the hearing, the interpreter was not present during all the meetings he had with Romero at the jail. Yet, the attorney clarified that “in other conversations I have had with [Romero], he’s been able to speak conversational English and I have been able to break down the terminology to a level at which he was comfortable with and I was comfortable with.” The court specifically asked Romero whether he agreed with his attorney’s statement, and Romero responded that he did. Further, before the court accepted his plea, the court asked Romero whether he “need[ed] any additional time to speak with [his] attorney and [his] interpreter about anything we’ve gone over here today or about anything on [his] mind before [he] ma[d]e [his] decision” to plead guilty. Romero responded that he did not.

{¶10} The record does not support Romero’s assertion that the court erred by accepting his plea because he did not have an interpreter present at all times. Romero’s interpreter was with him the day before the plea hearing as well as during the plea proceedings, and Romero himself admitted that he had felt comfortable speaking with his attorney in the absence of an interpreter in other pre-hearing meetings. “[T]here is nothing in the record to demonstrate that anything other than a meaningful discussion through the interpreter occurred.” *State v. Liu*, 9th Dist. No. 24112, 2008-Ohio-6793, at ¶20. Thus, the trial court did not err by refusing to allow Romero to withdraw his plea on the basis that he did not have an interpreter present at all times.

{¶11} The next issue is whether Romero was fully advised of his rights before the trial court accepted his plea. “[I]n order to ensure that each plea received by a trial court is knowingly and intelligently made, a trial court must engage in an oral dialogue with the

defendant pursuant to Crim.R. 11(C)(2).” *State v. Gegia*, 9th Dist. No. 21819, 2004-Ohio-2124, at ¶15. A trial court shall not accept a guilty plea in felony cases without personally addressing the defendant and doing all of the following:

“(a) Determining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.

“(b) Informing the defendant of and determining that the defendant understands the effect of the plea of guilty or no contest, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.

“(c) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant’s favor, and to require the state to prove the defendant’s guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself.” Crim.R. 11(C)(2)(a)-(c).

“A substantial-compliance standard of scrutiny determines whether the trial court gave the proper advisement regarding immigration consequences pursuant to R.C. 2943.031.” *State v. Abi-Aazar*, 9th Dist. No. 21403, 2003-Ohio-4780, at ¶9.

{¶12} The record reflects that the trial court advised Romero of his Crim.R. 11 rights. The trial court explained the maximum penalties Romero might receive, post-release control, and all of the rights specifically set forth in Crim.R. 11(C)(2)(c). After explaining each individual right, the trial court paused and asked Romero whether he understood the pertinent right. Romero responded affirmatively each time. Romero also responded affirmatively when asked if he was satisfied with his attorney and interpreter and whether he was entering his pleas of his own volition and with a full understanding of his rights. Further, the trial court specifically instructed Romero that “a conviction of the offense to which you are pleading guilty may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.” See R.C. 2943.031 (requiring

advisement of deportation in certain instances). Romero indicated that he understood the foregoing consequences were possibilities as a result of his pleading guilty. The record, therefore, supports the conclusion that the trial court fully complied with Crim.R. 11 as well as “the proper advisement regarding immigration consequences pursuant to R.C. 2943.031.” *Abi-Aazar* at ¶9.

{¶13} Upon reviewing the record, we conclude that the trial court did not err by denying Romero’s motion to withdraw his plea. Romero had the aid of an interpreter and was fully advised of his rights. See, e.g., *Gegia* at ¶15-16. Moreover, because the record supports the conclusion that Romero was fully advised of his rights, we also reject counsel’s additional argument that Romero’s trial counsel was ineffective because he failed to fully advise Romero of his rights. The record does not support Romero’s assertions that he was somehow misled into believing that his pleas did not have any consequences and that his attorney was only concerned with his “political aspirations.” The court properly denied Romero’s motion to withdraw his plea.

{¶14} Apart from the assignment of error proposed by Romero’s counsel, this Court has conducted a full, independent examination of the proceedings in accordance with *Anders v. California* (1967), 386 U.S. 738. We conclude that there are no appealable issues in this case. Romero’s appeal is without merit and frivolous under *Anders*.

III

{¶15} The judgment of the Summit County Court of Common Pleas is affirmed. Appellate counsel’s motion to withdraw as counsel is hereby granted.

Judgment affirmed.

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.

BETH WHITMORE
FOR THE COURT

CARR, J.
BELFANCE, P. J.
CONCUR

APPEARANCES:

BRENDON J. KOHRS, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN R. DIMARTINO, Assistant Prosecuting Attorney, for Appellee.