

IN THE SUPREME COURT OF OHIO

STATE OF OHIO	:	
Appellee	:	On Appeal from the Cuyahoga County Court of Appeals, Eighth Appellate District Court of Appeals
-vs-	:	
PAMELA LAWSON	:	Court of Appeals Case No. 111288
Appellant	:	

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT

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TABLE OF CONTENTS

	PAGES
EXPLANATION OF WHY THIS CASE IS A FELONY CASE OF PUBLIC OR GREAT GENERAL INTEREST	1
STATEMENT OF CASE AND FACTS.....	5
LAW AND ARGUMENT	7
<u>PROPOSITION OF LAW I: A DEFENDANT IS NOT BARRED FROM MAKING A POST-APPEAL MOTION TO WITHDRAW A GUILTY PLEA WHEN THE VALIDITY OF THE DEFENDANT’S GUILTY PLEA HAS NOT PREVIOUSLY BEEN AFFIRMED ON DIRECT APPEAL AND THE MOTION RELIES ON FACTUAL ASSERTIONS OUTSIDE THE RECORD OF THE PROCEEDINGS THAT LED TO THE DEFENDANT’S CONVICTION.....</u>	7
CONCLUSION	9
CERTIFICATE OF SERVICE.....	10

**EXPLANATION OF WHY THIS CASE IS A FELONY CASE
OF PUBLIC OR GREAT GENERAL INTEREST**

This case presents the following question for this Court’s consideration:

Is a defendant barred from making a post-appeal motion to withdraw a guilty plea when the validity of the defendant’s guilty plea has not previously been affirmed on direct appeal and the motion relies on factual assertions outside the record of the proceedings that led to the defendant’s conviction?¹

As things currently stand in Ohio, the answer to this question is: “It depends.”

In the Third, Eighth, Ninth, and Tenth Districts, the answer is yes – a Crim. R. 32.1 motion is categorically barred post-appeal. *See State v. Lawson*, 8th Dist. Cuyahoga No. 111288, 2022-Ohio-3332, ¶¶ 5, 8, 16 (citing *State ex rel. Special Prosecutors v. Judges, Court of Common Pleas*, 55 Ohio St.2d 94, 378 N.E.2d 162 (1978)) (holding that under *Special Prosecutors*, Pamela Lawson’s Crim. R. 32.1 motion was jurisdictionally barred because Ms. Lawson had already taken a direct appeal, when Ms. Lawson’s Crim. R. 32.1 motion was based upon an affidavit containing factual allegations outside of the record on appeal); *State v. Crangle*, 9th Dist. Summit No. 25735, 2011-Ohio-5776, ¶¶ 6-11 (finding that Crim. R. 32.1 motion was jurisdictionally barred on the authority of *Special Prosecutors*)²; *State v. Davic*, 10th Dist. Franklin No. 19AP-579, 2021-Ohio-131, ¶¶ 19-23 (same); *State v. Panning*, 3d Dist. Van Wert No. 15-15-11, 2016-Ohio-3284, ¶¶ 5-6, 9-10 (same, in a case where motion was based on evidence outside the record on appeal). Under the current categorical rule of the Eighth District, “once [a] conviction[] ha[s] been affirmed on appeal, the trial court lacks jurisdiction to entertain a motion to

¹ Ms. Lawson has filed a Motion to Certify Conflict on this question which is currently pending in the Eighth District.

² *But see id.* at ¶¶ 14-17 (Belfance, P.J., dissenting).

withdraw the guilty plea under Crim. R. 32.1[.]” *Lawson*, 8th Dist. Cuyahoga No. 111288, 2022-Ohio-3332 at ¶ 16.

In contrast, in the First, Second, and Seventh Districts, the answer to the above question is no:

[A]n appeals court’s decision affirming a judgment of conviction does not deprive a lower court of jurisdiction to entertain a Crim. R. 32.1 motion to withdraw a guilty plea, when the issue presented by the motion could not have been raised on direct appeal.

The * * * claims advanced by West in his postsentence Crim.R. 32.1 motion to withdraw his guilty pleas could not have been raised in his direct appeal, because those claims depended for their resolution upon evidence outside of the record of the proceedings leading to his convictions upon those pleas. The claims could not be said to have been within the compass of this court’s judgment affirming West’s convictions in his direct appeal. Nor would a judgment by the common pleas court granting withdrawal be inconsistent with our judgment affirming his convictions.

State v. West, 1st Dist. Hamilton No. C-150587, 2017-Ohio-5596, ¶ 21. *See also State v. Smith*, 1st Dist. Hamilton No. C-180081, 2019-Ohio-3642, ¶ 31 (applying *State v. Davis*, 131 Ohio St.3d 1, 2011-Ohio-5028, 759 N.E.2d 516, ¶ 37 and holding that trial court had jurisdiction to consider a Crim. R. 32.1 motion despite affirmance of convictions on direct appeal, notwithstanding *Special Prosecutors*, when the motion “depended for its resolution upon evidence outside the record of the proceedings leading to his convictions”); *State v. Lauharn*, 2nd Dist. Miami No. 2011 CA 10, 2012-Ohio-1572, ¶¶ 2-3, 13 (applying *Davis* and finding that trial court retained jurisdiction over Crim. R. 32.1 motion following resolution of direct appeal when motion was based on factual allegations regarding defendant’s state of mind at the time of plea and trial counsel’s allegedly deficient advice regarding sentencing possibilities); *State v. Staffrey*, 7th Dist. Mahoning Nos. 10 MA 130, 10 MA 131, 2011-Ohio-5760, ¶¶ 35-36 (applying *Davis* and finding no jurisdictional bar to Crim. R. 32.1 motion based on errors in plea paperwork

and trial counsel's allegedly deficient waiver of such errors in open court, although finding that these issues were barred by res judicata as they could have been raised on direct appeal).

This issue, which has nearly evenly divided the seven appellate courts known to counsel to have addressed it, is one of great general interest because it implicates the viability of Crim. R. 32.1 in "provid[ing] a safety net for defendants who have reasonable grounds to challenge their convictions." *West*, 1st Dist. Hamilton No. C-150587, 2017-Ohio-5596 at ¶ 21 (quoting *Davis*, 131 Ohio St.3d 1, 2011-Ohio-5028, 759 N.E.2d 516 at ¶ 37). If *Special Prosecutors* is read as a categorical jurisdictional bar to consideration of post-appeal Crim. R. 32.1 motions, *actually innocent* defendants who were coerced to take guilty pleas, elect to appeal their sentences, and later discover evidence establishing their innocence, are left without the ability to have their day in court where they must bear the burden of proving a manifest injustice in order to obtain relief.

What accounts for the drastically different application of *Special Prosecutors* in the First, Second, and Seventh Districts as opposed to the Third, Eighth, Ninth, and Tenth Districts? At the heart of the conflict lie two competing interpretations of this Court's decision in *Davis*, 131 Ohio St.3d 1, 2011-Ohio-5028, 759 N.E.2d 516. In *Davis*, this court clarified that "the holding in *Special Prosecutors* does not bar the trial court's jurisdiction over posttrial motions permitted by the Ohio Rules of Criminal Procedure." *Id.* at 9. Under the rule in *Davis*, trial courts retain jurisdiction to adjudicate post-trial motions following an appellate court's affirmance of the conviction, so long as said motions are not inconsistent with the appellate judgment. *Id.* at 7 (quoting *Special Prosecutors*, 55 Ohio St.3d at 97) (emphasis added):

[The] trial court’s granting of the motion to withdraw the guilty plea and the order to proceed with a new trial were inconsistent with the judgment of the Court of Appeals affirming the trial court’s conviction premised upon the guilty plea. The judgment of the reviewing court is controlling upon the lower court ***as to all matters within the compass of the judgment.***

The question of whether the holding of *Davis* extends to Crim. R. 32.1 motions is the critical dividing line that has produced a growing inter-district split in authority governing how and when to apply *Special Prosecutors*. For example, the Eighth and Ninth, and Tenth Districts have found that the holding of *Davis* is limited to Crim. R. 33 motions due to its use of the word “posttrial[.]” See *Lawson*, 8th Dist. Cuyahoga No. 111288, 2022-Ohio-3332 at ¶ 11 (collecting authorities); *Davic*, 10th Dist. Franklin No. 19AP-579, 2021-Ohio-131 at ¶ 20. On the other hand, the First, Second, and Seventh Districts have taken a different approach:

We are * * * not persuaded that the statement in *Davis* concerning the role of “posttrial motions” can be so narrowly parsed as to confine the case’s holding to postconviction motions challenging convictions resulting from a trial. Rather, we agree with the Second and Seventh Appellate Districts that the Supreme Court’s intention in *Davis* was to clarify the rule of *Special Prosecutors*, with a view toward advancing the interest, embodied in the criminal rules permitting postconviction motions, in “provid[ing] a safety net for defendants who have reasonable grounds to challenge their convictions.”

West, 1st Dist. Hamilton No. C-150587, 2017-Ohio-5596 at ¶ 20.

This Court must resolve this substantial split in the lower courts and articulate a clear rule as to the application of *Special Prosecutors* and *Davis* to Crim. R. 32.1 motions. This case presents an appropriate vehicle for this Court to do so, and this Court should accept jurisdiction accordingly.

STATEMENT OF CASE AND FACTS

As relevant here, Ms. Lawson was arrested on January 6, 2015 in Case No. CR-15-592484. On January 12, 2015, Ms. Lawson was charged with eight counts via indictment, the most serious of which was Aggravated Murder. Ms. Lawson pled guilty to the Aggravated Murder count on May 29, 2015. On June 19, 2015, Ms. Lawson was sentenced to life in prison with parole eligibility after thirty full years, consecutive to a three-year prison term on a firearm specification. Lekev Spivey, Ms. Lawson's co-defendant and the principal offender in the matter, received an aggregate sentence of twenty-eight years to life in prison.

On October 30, 2015, Ms. Lawson (via prior counsel) filed a Motion for Delayed Appeal, which was granted by the Eighth District on November 23, 2015. This appeal, which was ultimately unsuccessful, raised a single assignment of error regarding the trial court's failure to give Ms. Lawson an individualized sentencing hearing in light of her personal mitigating circumstances. The appeal raised no challenge to the validity of Ms. Lawson's guilty plea or conviction, but rather was solely focused on deficiencies in the sentencing proceeding. The Eighth District affirmed Ms. Lawson's sentence on November 3, 2016 and denied Ms. Lawson's Motion for Reconsideration on December 12, 2016.

On August 8 and 9, 2016, Ms. Lawson filed an Affidavit of Indigency and a *pro se* Petition to Vacate or Set Aside Judgment of Conviction or Sentence. Ms. Lawson also filed corresponding Motions for Appointment of Counsel and Expert Assistance in which she explained that she lacked the skill and knowledge to adequately pursue her petition without the assistance of counsel, and that appointment of counsel was necessary to protect her constitutional rights and ensure that all issues were fully

reviewed and litigated. The trial court denied Ms. Lawson's Petition and accompanying motions on October 13, 2016.

On March 4, 2021, Ms. Lawson filed an Affidavit of Indigency and a Motion for Appointment of Counsel, to which Ms. Lawson attached an eight-page notarized affidavit by her co-defendant Lekev Spivey, in which Mr. Spivey made exculpatory statements regarding Ms. Lawson's role in the underlying offense, including that Ms. Lawson was "completely innocent" and that "[i]f I would have told the truth in the beginning my co-defendant wouldn't be locked up." The trial court denied Ms. Lawson's Motion for Appointment of Counsel on April 14, 2021.

On September 19, 2021, Ms. Lawson filed the Motion to Withdraw Guilty Plea that is the subject of the instant appeal, along with an affidavit alleging that her trial counsel failed to adequately communicate with her or negotiate on her behalf; that she sought a mental health evaluation and was denied such an evaluation despite her diagnostic history of bipolar depression and post-traumatic stress disorder; and that she did not understand what she was pleading to at the time of the plea. The trial court denied the Motion on January 19, 2022. The trial court did not engage with the merits of Ms. Lawson's motion in any respect, instead denying the motion on jurisdictional grounds, with a Journal Entry stating in full:

DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA FILED ON
09/17/21 IS DENIED

DEFENDANT'S CONVICTION WAS AFFIRMED, STATE V LAWSON,
8TH DISTRICT, CUYAHOGA NO. 103699, 2016 - OHIO - 7607.

NO CONDITIONS EXIST TO PROVIDE THE COURT WITH
JURISDICTION.

Ms. Lawson timely appealed to the Eighth District, arguing that the trial court erred in holding that it had no jurisdiction to consider Ms. Lawson's Motion to Withdraw her guilty plea. The Eighth District affirmed the trial court and reaffirmed the Eighth District's position that "once [a] conviction[s] ha[s] been affirmed on appeal, the trial court lacks jurisdiction to entertain a motion to withdraw the guilty plea under Crim. R. 32.1[.]" *Lawson*, 8th Dist. Cuyahoga No. 111288, 2022-Ohio-3332 at ¶¶ 1, 16.

This timely memorandum in support of jurisdiction and request for leave to appeal follows.

LAW AND ARGUMENT

Proposition of Law I: A defendant is not barred from making a post-appeal motion to withdraw a guilty plea when the validity of the defendant's guilty plea has not previously been affirmed on direct appeal and the motion relies on factual assertions outside the record of the proceedings that led to the defendant's conviction.

In *Davis*, 131 Ohio St.3d at 9, 2011-Ohio-5028, 959 N.E.Ed 516, the Ohio Supreme Court clarified quite explicitly that "the holding in *Special Prosecutors* does not bar the trial court's jurisdiction over posttrial motions permitted by the Ohio Rules of Criminal Procedure." As *Davis* makes abundantly clear, trial courts retain jurisdiction to adjudicate post-trial motions following an appellate court's affirmance of the conviction, so long as said motions are not inconsistent with the appellate judgment. *Id.* at 7 (*quoting Special Prosecutors*, 55 Ohio St.3d at 97) (emphasis added):

[The] trial court's granting of the motion to withdraw the guilty plea and the order to proceed with a new trial were inconsistent with the judgment of the Court of Appeals affirming the trial court's conviction premised upon the guilty plea. The judgment of the reviewing court is controlling upon the lower court ***as to all matters within the compass of the judgment.***

To be sure, the procedural history underlying *Davis* involves a Crim. R. 33 motion for new trial rather than a Crim. R. 32.1 motion as is the case here. Nevertheless,

under *Davis* and *Special Prosecutors*, the critical inquiry in determining a trial court's jurisdiction over posttrial motions authorized by the Rules of Criminal Procedure is not the precise nature of the motion at issue, but, rather, "whether the specific issue has [] been decided upon direct appeal." *Id.*; see also *id.* at 7 (quoting *Special Prosecutors*, 55 Ohio St. 3d at 97) ("The judgment of the reviewing court is controlling upon the lower court as to all matters within the compass of the judgment.").

Accordingly, the First, Second, and Seventh District Courts of Appeals have appropriately rejected efforts by the State to exempt Crim. R. 32.1 from the holding of *Davis*. See *West*, 1st Dist. Hamilton No. C-150587, 2017-Ohio-5596 at ¶ 21; *Smith*, 1st Dist. Hamilton No. C-180081, 2019-Ohio-3642 at ¶ 31; *Lauharn*, 2nd Dist. Miami No. 2011 CA 10, 2012-Ohio-1572 at ¶ 13; *Staffrey*, 7th Dist. Mahoning Nos. 10 MA 130, 10 MA 131, 2011-Ohio-5760 at ¶¶ 35-36.

Applying this proposition to the case at hand, there are three primary flaws in the Eighth District's analysis below. First, the Eighth District's analysis was grounded in its position that *Davis* is generally inapplicable to Crim. R. 32.1 motions. *Lawson*, 8th Dist. Cuyahoga No. 111288, 2022-Ohio-3332 at ¶¶ 11, 16.

Second, in finding that the claims in Ms. Lawson's Crim. R. 32.1 petition could have been raised on direct appeal, the Eighth District failed to account for the fact that the claims within were based upon factual assertions outside the record of proceedings that led to her conviction. *Id.* at ¶¶ 5, 16-18.

Third, the Eighth District's suggestion that Ms. Lawson's motion could have been raised on direct appeal, and was therefore barred by res judicata, was misguided for two independent reasons. *Id.* at ¶ 18. Number one, her claims could not have been raised on direct appeal because they were based upon factual assertions outside the record. *Id.* at

¶ 5. Number two, the Eighth District was without authority to consider the question of res judicata due to the trial court's holding that it lacked jurisdiction to consider the motion. *See Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E.2d, ¶ 21 (2004) (“[I]n the absence of subject-matter jurisdiction, a court lacks the authority to do anything but announce its lack of jurisdiction and dismiss.”); *Lycan v. Cleveland*, 146 Ohio St.3d 29, 2016-Ohio-422, 51 N.E.3d 593, ¶¶ 21-22 (noting the “well-settled principle[]” that “an appellate court limits its review to issues actually decided by the trial court in its judgment” and “conclud[ing] that the Eighth District improperly ruled on the question of res judicata, because the trial court did not decide that question in a final, appealable order.”).

At bottom, in the instant case, the validity of Ms. Lawson's guilty plea had never been raised in or addressed by the Eighth District prior to her Motion to Withdraw, and Ms. Lawson's Motion to Withdraw was based on events outside the record – it therefore could not have been raised on direct appeal. Ms. Lawson's Crim. R. 32.1 motion did not raise a matter within the compass of this Court's previous judgment, and as such it was not barred by *Special Prosecutors*.

CONCLUSION

For the foregoing reasons, Defendant-Appellant Pamela Lawson asks this Court to accept jurisdiction over this matter as it presents questions of great general and public interest.

Respectfully Submitted,

/s Jonathan Sidney
Jonathan Sidney
Counsel for Appellant

CERTIFICATE OF SERVICE

A copy of the foregoing Memorandum In Support of Jurisdiction was served upon MICHAEL C. O'MALLEY, Cuyahoga County Prosecutor, The Justice Center - 9th Floor, 1200 Ontario Street, Cleveland, Ohio 44113 via email on this 7th day of November, 2022.

/s Jonathan Sidney
Jonathan Sidney
Counsel for Appellant

