The Supreme Court of Ohio

CASE ANNOUNCEMENTS

March 1, 2023

[Cite as *03/01/2023 Case Announcements #2*, 2023-Ohio-580.]

APPEALS NOT ACCEPTED FOR REVIEW

2022-1462. State v. Wiesenborn.
Montgomery App. No. 29388, 2022-Ohio-3762.
Donnelly, J., dissents, with an opinion joined by Stewart and Brunner, JJ.

DONNELLY, J., dissenting.

{¶ 1} Appellant, Zaren P. Wiesenborn, was 19 years old when he pleaded no contest to 33 counts involving rape, gross sexual imposition, and kidnapping. Most of the charged offenses took place when Wiesenborn was under 18 years old. The trial court imposed an aggregate sentence of 78.5 years. As the Second District Court of Appeals acknowledged in its review of the sentencing decision, Wiesenborn's first opportunity to apply for judicial release would be a decade beyond his life expectancy. *State v. Wiesenborn*, 2019-Ohio-4487, 135 N.E.3d 812, ¶ 3, 48 (2d Dist.).

{¶ 2} Wiesenborn filed a motion to withdraw his plea under Crim.R. 32.1 a few days after sentencing, asserting that defense counsel had led him to believe that he was likely to receive an aggregate sentence of 10 to 20 years and that defense counsel had told Wiesenborn that he could not imagine that the trial court would impose the 60-year sentence that appellee, the state, was seeking. In addition to his own affidavit, Wiesenborn submitted an affidavit from defense counsel supporting his claims. The trial court denied the motion without holding a hearing. The Second District affirmed the trial court's judgment, describing the entirety of defense counsel's statements to Wiesenborn as mere "speculation and prediction" and noting that

counsel did not claim to have *promised* Wiesenborn that he would receive a sentence less severe than what the state sought. 2022-Ohio-3762, ¶ 20.

{¶ 3} Defense counsel's statements regarding the 10-to-20-year sentencing range might be considered mere speculation or prediction. But what about counsel's statement to Wiesenborn that he could not imagine that the trial court would impose a 60-year sentence (let alone a 78.5-year sentence)? An assurance that an event is unimaginable—i.e., beyond the realm of possibility—seems an awful lot like a promise that the event will not happen.

{¶ 4} The inquiry into the voluntary, knowing, and intelligent nature of a criminal defendant's plea should not be oversimplified. The Second District's oversimplification of this process in Wiesenborn's case creates room for injustice in plea-withdrawal cases based on misrepresentations that do not involve the magic words, "I promise."

{¶ 5} As I have previously stated, "[t]he standards currently employed by Ohio's courts do not adequately differentiate between postsentence plea-withdrawal motions that merit closer review and those that do not. Trial and appellate courts across the state would benefit greatly from this court's review of the issue." *State v. Dunlap*, 161 Ohio St.3d 1416, 2021-Ohio-181, 161 N.E.3d 704, ¶ 6 (Donnelly, J., dissenting). I maintain that position and therefore dissent from this court's decision to not accept Wiesenborn's appeal.

STEWART and BRUNNER, JJ., concur in the foregoing opinion.
