

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY, OHIO**

STATE OF OHIO,	:	OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2015-A-0002
DEANTHONY B. CURRY,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Ashtabula County Court, Western District, Case No. 2008 TRC 1931 W.

Judgment: Affirmed.

Nicholas A. Iarocci, Ashtabula County Prosecutor, and *Shelley M. Pratt*, Assistant Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047-1092 (For Plaintiff-Appellee).

Deanthony B. Curry, pro se, PID: A622-007, Lake Erie Correctional Institution, P.O. Box 8000, 501 Thompson Road, Conneaut, OH 44030 (For Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Deanthony B. Curry, appeals from the judgment of the Ashtabula County Court, Western District, denying his post-sentence motion to withdraw his guilty plea, entered December 30, 2008, to an amended charge of having physical control of a vehicle while under the influence, in violation of R.C. 4511.194. We affirm the trial court’s judgment.

{¶2} On July 10, 2008, appellant was cited with operating a vehicle while under the influence (“OVI”), in violation of R.C. 4511.19, a misdemeanor of the first degree. Appellant entered a not-guilty plea to the charge. Appellant eventually withdrew his not-guilty plea and entered a plea of guilty to one count of having physical control, in violation of R.C. 4511.194. Appellant was fined and placed on one-year supervised probation.

{¶3} On September 19, 2014, appellant filed a motion to withdraw the guilty plea, pursuant to Crim.R. 32.1. The trial court subsequently denied the motion, ruling appellant failed to allege any facts that would rise to the level of a “manifest injustice.” Appellant now appeals and assigns three errors for our review. Because they pose related issues, we shall address each of appellant’s assignments of error together. They provide:

{¶4} “[1.] The appellant was deprived the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendment[s] to the United States Constitution and Article I, Section 10 of the Ohio Constitution.

{¶5} “[2.] The trial court erred to the prejudice of the appella[nt] by not compelling the state to provide the discovery under Ohio Crim.R. 16 and bill of particulars to the defense. The appella[nt] was denied due process under the Fourteenth Amendment to the United States Constitution and Article I, Section 10 under the Ohio Constitution.

{¶6} “[3.] When the trial court accepted his guilty plea pursuant to [R.C.] 2937.08 the appella[nt] was deprived due process and his right to confrontation under

the Fourteenth Amendment to the United States Constitution and Article 1, Section 10 of the Ohio Constitution.”

{¶7} Under his collective assignments of error, appellant argues he received ineffective assistance of counsel because, inter alia, his attorney failed to conduct proper pretrial discovery, interview witnesses, and provide a meaningful defense. He further asserts the trial court erred by not compelling the state to produce relevant discovery. Similarly, appellant contends the state committed a violation of *Brady v. Maryland*, 373 U.S. 83 (1963), when it did not provide certain, albeit unidentified, exculpatory evidence. Finally, appellant argues the trial court committed error when it accepted his guilty plea without ensuring he understood the rights he was waiving, as required by Crim.R. 11.

{¶8} Crim.R. 32.1 provides that “[a] motion to withdraw a plea of guilty * * * 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 a defendant to withdraw his plea.” A defendant who seeks to withdraw a guilty plea after sentence must establish a manifest injustice. See e.g. *State v. Wilfong*, 11th Dist. Lake No. 2010-L-074, 2011-Ohio-6512, ¶12. “Manifest injustice is determined by examining the totality of the circumstances surrounding the guilty plea. Paramount in this determination is the trial court’s compliance with Crim.R. 11(C), evidence of which must show in the record that the accused understood his rights accordingly.” *State v. Padgett*, 8th Dist. Cuyahoga No. 64846, 1993 Ohio App. LEXIS 3374, *2 (Jul. 1, 1993).

{¶9} The decision whether to grant or deny a post-sentence motion to withdraw a guilty plea is within the sound discretion of the trial court. *State v. Borecky*, 11th Dist.

Lake No. 2007-L-197, 2008-Ohio-3890, ¶14. The term “abuse of discretion” is one of art, connoting judgment exercised by a court, which does not comport with reason or the record. *State v. Underwood*, 11th Dist. Lake No. 2008-L-113, 2009-Ohio-2089, ¶30, citing *State v. Ferranto*, 112 Ohio St. 667, 676-678 (1925). Where the record neither shows a “clear or openly unjust action” nor “an extraordinary and fundamental flaw in the plea proceeding,” the denial of a postsentence motion to withdraw a guilty plea will typically be affirmed. *State v. Corradetti*, 11th Dist. Lake No. 2012-L-006, 2012-Ohio-5225, ¶9.

{¶10} With the exception of his argument pertaining to the trial court’s acceptance of his plea, each of appellant’s allegations relate to aspects of the proceedings that occurred prior to his acceptance of the plea to the amended charge. Generally, the entry of a guilty plea waives any non-jurisdictional error committed in the course of the proceedings to that point. *State v. Marez*, 6th Dist. Sandusky No. S-09-005, 2009-Ohio-6976, ¶30, citing *State v. Spates*, 64 Ohio St.3d 269, 271 (1992). Further, this court has held: “when a defendant enters a guilty plea and thereby admits that he is in fact guilty of the charged [offense], he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.” *State v. Fitzpatrick*, 11th Dist. Lake No. 2009-L-030, 2010-Ohio-710, ¶27. (Citations omitted.) As appellant entered a guilty plea, he waived his ability to challenge any perceived non-jurisdictional or constitutional irregularities, which he alleges occurred prior to the entry of his plea.

{¶11} Moreover, appellant’s assertion that the trial court failed to ensure he entered his plea knowingly, intelligently, and voluntarily is not supported by any

reference to the plea hearing or other record evidence. Further, this argument could have been made on a direct appeal, which appellant did not take in the underlying matter. The doctrine of res judicata bars all claims raised in a Crim.R. 32.1 post-sentence motion to withdraw a guilty plea that were either raised or could have been raised on direct appeal. *State v. Ketterer*, 126 Ohio St.3d 448, 2010-Ohio-3831, ¶59. Because he did not file a direct appeal, that argument is barred by the doctrine of res judicata.

{¶12} For the foregoing reasons, the trial court did not abuse its discretion in concluding appellant's arguments did not rise to the level of a manifest injustice.

{¶13} Appellant's assignments of error are without merit.

{¶14} The judgment of the Ashtabula County Court, Western District, is affirmed.

TIMOTHY P. CANNON, P.J., concurs,

COLLEEN MARY O'TOOLE, J., concurs in judgment only.