

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLERMONT COUNTY

STATE OF OHIO,	:	CASE NO. CA2025-12-097
Appellee,	:	
vs.	:	<u>OPINION AND</u>
	:	<u>JUDGMENT ENTRY</u>
HEATHER MARIE HUBBS,	:	10/5/2026
Appellant.	:	
	:	

CRIMINAL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
Case No. 2024 CR 000762

Mark J. Tekulve, Clermont County Prosecuting Attorney, and Nick Horton, Assistant Prosecuting Attorney, for appellee.

W. Stephen Haynes, Clermont County Public Defender, and Matthew V. Faris, Assistant Public Defender, for appellant.

OPINION

PIPER, J.

{¶ 1} Appellant, Heather Marie Hubbs, appeals her conviction in the Clermont County Court of Common Pleas following her plea of guilty to one count of third-degree felony child endangering. For the reasons set forth below, we affirm Hubbs' conviction.

I. Factual and Procedural Background

{¶ 2} On December 12, 2024, Heather Marie Hubbs was indicted on three separate counts: (1) felonious assault, a second-degree felony; (2) attempted felonious assault, a third-degree felony; and (3) endangering children, a second-degree felony. The bill of particulars alleged that from November 2008 through August 2024, Hubbs sought numerous unnecessary medical procedures and medications for her child, going from hospital to hospital and doctor to doctor until she found someone responsive to her requests. From July 27, 2024 through August 8, 2024, Hubbs sought the insertion of a central line, which would have caused serious harm to her child; and on August 8, 2024 to August 9, 2024, Hubbs administered dangerous levels of clonidine to her child, causing her child's blood pressure and heart rate to drop precipitously, causing serious physical harm.

{¶ 3} On September 16, 2025, Hubbs filed a motion to dismiss pursuant to Crim.R. 12(C)(2). In her motion, Hubbs argued that the bill of particulars failed to establish venue, that the facts alleged in counts two and three failed to support the crimes charged, and that these counts violated her constitutional right to guide her child's medical care. In an entry journalized on October 15, 2025, the trial court denied Hubbs' motion "for the reasons stated in the State's Response." Thereafter, the parties reached a plea agreement, and Hubbs pleaded guilty to an amended count of child endangering as a felony of the third degree, with the other counts dismissed. The amended count narrowed the span of conduct and alleged that from November 5, 2021 through August 12, 2024, Hubbs sought and obtained numerous unnecessary medical procedures and medications for her child, causing the child serious physical harm.

{¶ 4} After the parties reached their plea agreement, the trial court held a plea hearing and engaged Hubbs in a Crim.R. 11 colloquy, informing her of the penalties she

faced as a result of her plea, of the nature of her charge, of the fact that it could sentence her to prison or community control and could do so that day, that her plea of guilty was a complete admission to the charge, and of the rights she would be waiving by pleading guilty. Hubbs indicated she understood those rights and waived them in open court. She then entered her guilty plea. Upon Hubbs entering her plea, the court then asked the State for a statement of facts, which Hubbs did not dispute. The court then accepted Hubbs' plea, finding she entered it knowingly, intelligently, and voluntarily, and set the matter for sentencing.

{¶ 5} Eleven days after pleading guilty, Hubbs filed a motion to withdraw her plea, alleging that she was pressured into pleading guilty when she learned that the Clermont County Department of Job and Family Services was planning on filing for permanent custody of her child, that she did not have the opportunity to consider the ramifications of her plea, and after "sober reflection" she believed she was actually innocent. Shortly thereafter, on November 3, 2025, the trial court held a hearing on Hubbs' motion to withdraw her plea. Following that hearing, the trial court denied Hubbs' motion and proceeded with sentencing Hubbs that same day. After hearing from both parties, the trial court found the jointly recommended sentence appropriate and sentenced Hubbs to three years of reporting community control. Hubbs then appealed. On appeal, Hubbs raises three assignments of error for our review.

II. Legal Analysis

{¶ 6} Assignment of Error No. 1:

THE TRIAL COURT ERRED IN DENYING APPELLANT'S
MOTION TO VACATE HER PLEA PRIOR TO SENTENCING.

{¶ 7} In her first assignment of error, Hubbs argues that the trial court should have permitted her to withdraw her guilty plea and abused its discretion by not giving proper

weight to factors she argues were in her favor during its analysis.

{¶ 8} Pursuant to Crim.R. 32.1, a defendant may file a presentence motion to withdraw his or her guilty plea. *State v. Schwartz*, 2019-Ohio-4912, ¶ 12 (12th Dist.). A defendant's presentence motion to withdraw a guilty plea "should be freely and liberally granted." *State v. Gabbard*, 2007-Ohio-461, ¶ 7 (12th Dist.), citing *State v. Xie*, 62 Ohio St.3d 521, 527 (1992). However, although freely and liberally granted, that does not mean a defendant possesses an absolute right to withdraw a guilty plea prior to sentencing. *State v. Manis*, 2012-Ohio-3753, ¶ 24 (12th Dist.). A mere change of heart regarding a decision to enter a plea, without some additional justification, is not a sufficient basis for the withdrawal of a guilty or no contest plea. *State v. Osborne*, 2007-Ohio-1794, ¶ 19 (12th Dist.). "Rather, the trial court must conduct a hearing to determine whether there is a reasonable and legitimate basis for the withdrawal of the plea." *State v. Newton*, 2015-Ohio-2319, ¶ 10 (12th Dist.).

{¶ 9} "In determining whether to grant a presentence motion to withdraw a guilty plea, the trial court should consider the circumstances surrounding the defendant's plea." *State v. Harris*, 2019-Ohio-1700, ¶ 11 (12th Dist.), citing *State v. Metcalf*, 2003-Ohio-6782, ¶ 11 (12th Dist.). There are several factors that should be considered when evaluating the circumstances surrounding the defendant's plea. *State v. Owens*, 2022-Ohio-160, ¶ 30 (12th Dist.). Those factors include, but are not limited to (1) whether the defendant was represented by highly competent counsel; (2) whether the defendant was afforded a complete Crim.R. 11 hearing before entering the plea; (3) whether the trial court conducted a full and impartial hearing on the defendant's motion to withdraw the plea; (4) whether the trial court gave full and fair consideration to the motion; (5) whether the motion was made within a reasonable time; (6) whether the motion set out specific reasons for the withdrawal; (7) whether the defendant understood the nature of the

charges and the possible penalties; (8) whether the defendant was possibly not guilty of the charges or had a complete defense to the charges; and (9) whether the state would have been prejudiced by the withdrawal. *State v. Sales*, 2022-Ohio-4326, ¶ 25 (12th Dist.).

{¶ 10} "No one factor is conclusive in the determination of whether a plea should be allowed to be withdrawn." *State v. Rivera*, 2014-Ohio-3378, ¶ 17 (12th Dist.), citing *State v. Fish*, 104 Ohio App.3d 236, 240 (1st Dist. 1995). The decision to grant or deny a presentence motion to withdraw a guilty plea instead "rests within the sound discretion of the trial court." *State v. Medina*, 2022-Ohio-1799, ¶ 13 (12th Dist.). This court will not reverse a trial court's decision denying such a motion absent an abuse of that discretion. *State v. Taylor*, 2014-Ohio-3080, ¶ 7 (12th Dist.). "An abuse of discretion connotes more than an error of law or judgment; it implies that the trial court's attitude was arbitrary, unreasonable, or unconscionable." *State v. Robinson*, 2013-Ohio-5672, ¶ 14 (12th Dist.). "A decision is unreasonable where a sound reasoning process does not support it." *State v. Miller*, 2016-Ohio-7360, ¶ 7 (12th Dist.).

{¶ 11} Hubbs asserts that when she pleaded guilty, she was overcome by fear and duress tied to the risk of losing permanent custody of her child, that this fear and duress prevented her from understanding the nature of the charges and penalties, and that she is innocent but only pleaded guilty to maintain custody of her child.

{¶ 12} At the plea-withdrawal hearing, the trial court addressed each of the nine factors:

- (1) the trial court found Hubbs was satisfied with counsel, and he had reviewed the evidence, discussed trial strategy, and answered her questions;
- (2) the trial court found Hubbs received a complete Crim.R. 11 hearing and confirmed that she understood the nature of the charge, her guilty plea, the potential penalties, and

the rights she was waiving;

- (3) the trial court stated it was holding the hearing on Hubbs' motion, but deferred to the appellate court's judgment if it was full and impartial;
- (4) the trial court stated specific reasons for its decision, but deferred to the appellate court's judgment whether it provided full and fair consideration of the motion;
- (5) the trial court found the motion was timely;
- (6) the trial court recognized that Hubbs sought to withdraw her plea because she asserted emotional distress when she entered her plea, but found that it was natural for her to consider the consequences of her plea for her child custody case, and ultimately no one in this criminal case pressured her into accepting the plea deal;
- (7) the trial court found Hubbs understood the nature of the charges and possible penalties based on its prior plea colloquy;
- (8) the trial court found Hubbs had changed her mind about her plea and was reasserting her innocence, but recognized that she knew of her possible venue and constitutional defenses before she pleaded guilty, these possible defenses remained unchanged after her plea, and no new evidence had been discovered to create a complete defense; and
- (9) the trial court found withdrawal would prejudice the State because it had released more than 40 witnesses located across the country, including one who might be unavailable for a rescheduled trial because of work in Africa.

{¶ 13} Upon our review of the record, we find that the trial court held a full and impartial hearing, provided full and fair consideration of Hubbs' motion, and carefully weighed each of the factors above. We agree with the trial court's conclusions and find that nothing about its decision-making process was arbitrary, unreasonable, or unconscionable.

{¶ 14} Hubbs' first assignment of error is overruled.

{¶ 15} Assignment of Error No. 2:

THE TRIAL COURT ERRED IN NOT STATING ITS
ESSENTIAL FINDINGS ON THE RECORD IN DENYING
APPELLANT'S MOTION TO DISMISS FILED PURSUANT
TO CRIM.R. 12(C)(2).

{¶ 16} In her second assignment of error, Hubbs asserts that the trial court failed to comply with Crim.R. 12(F) because it did not explicitly state its findings when it denied her pretrial motion to dismiss.¹ Crim.R. 12(F) states that when a pretrial motion is made pursuant to divisions (C)(1) to (C)(5), "[w]here factual issues are involved in determining a motion, the court shall state its essential findings on the record."

{¶ 17} In her pretrial motion, Hubbs asked the trial court to dismiss this case under Crim.R. 12(C)(2), which states in relevant part that, "[p]rior to trial, any party may raise by motion any defense, objection, evidentiary issue, or request that is capable of determination *without the trial of the general issue*" including "[d]efenses and objections based on defects in the indictment." (Emphasis added.) Hubbs argued that the bill of particulars failed to establish venue, that the facts alleged in counts two and three failed to support the crimes charged, and that these counts violated her constitutional right to guide her child's medical care.

{¶ 18} However, Crim.R. 12(C) makes clear that a pretrial motion to dismiss can only raise matters that are capable of determination without a trial on the general issue. *State v. Gaines*, 2011-Ohio-1475, ¶ 16 (12th Dist.). The Ohio Rules of Criminal Procedure

1. Ordinarily, a defendant who pleads guilty waives the right to challenge any action taken by a trial court prior to that point in the proceedings. *State v. Lopez*, 2025-Ohio-1011, ¶ 13 (12th Dist.). However, there is a narrow exception when pre-plea errors directly undermined the knowing, intelligent, and voluntary nature of the plea itself. *Id.* at ¶ 14. In her appellate brief, Hubbs argues that the absence of an explicit venue ruling calls into question whether her plea was knowing and voluntary, pointing to her own testimony at the plea-withdrawal hearing that counsel had advised her venue would be contested at trial. Therefore, we proceed with our analysis.

do not provide for the equivalent of a civil motion for summary judgment. *Id.* In other words, "a Crim.R. 12 pretrial motion to dismiss cannot reach the merits or substance of the allegations." *Id.* That is precisely what Hubbs' motion to dismiss asked the trial court to do.

{¶ 19} The indictment alleged the elements of each of the charges and alleged venue in Clermont County. Hubbs' motion, however, improperly asked the court to determine the merits of the alleged facts and decide whether venue was established, whether her conduct constituted the offenses, and whether her constitutional rights protected her conduct—issues that could only be determined at trial. We find Hubbs' arguments were not capable of determination without a trial on the general issue; therefore, the trial court was not obligated to issue explicit findings, as it would have been improper to weigh in on matters that are reserved for trial.²

{¶ 20} Hubbs' second assignment of error is overruled.

{¶ 21} Assignment of Error No. 3:

APPELLANT'S TRIAL COUNSEL WAS INEFFECTIVE.

{¶ 22} In her third assignment of error, Hubbs argues her trial counsel was ineffective for not filing a motion to transfer venue and for not requesting a hearing and findings of fact on the trial court's decision on her motion to dismiss.

{¶ 23} To prevail on an ineffective assistance of counsel claim, Hubbs must establish (1) deficient performance by trial counsel, that is, performance falling below an objective standard of reasonable representation, and (2) prejudice, that is, a reasonable probability that but for counsel's errors, the result of the proceedings would have been

2. Even if the trial court could have issued such findings, Hubbs never requested findings and therefore forfeited the claim. See *State v. Adams*, 2015-Ohio-3954, ¶ 112 (noting that Crim.R. 12(F) is not self-executing).

different. *State v. Taylor*, 2019-Ohio-3437, ¶ 16 (12th Dist.), citing *Strickland v. Washington*, 466 U.S. 668, 687-688, 694 (1984) and *State v. Mundt*, 2007-Ohio-4836, ¶ 62. The failure to demonstrate either prong is fatal to an ineffective assistance of counsel claim. *State v. Kaufhold*, 2020-Ohio-3835, ¶ 54 (12th Dist.). In considering an ineffective assistance claim, an "appellate court must give wide deference to the strategic and tactical choices made by trial counsel in determining whether counsel's performance was constitutionally ineffective." *State v. McLaughlin*, 2020-Ohio-969, ¶ 54 (12th Dist.).

{¶ 24} The failure to seek a change of venue is not tantamount to ineffective assistance. *State v. Robinson*, 2014-Ohio-1663, ¶ 30 (12th Dist.). Whether to seek a venue change is a matter of trial strategy that a reviewing court will not second-guess. *Id.*, citing *State v. Frazier*, 2007-Ohio-5048, ¶ 234. Moreover, nothing indicated that Hubbs could not receive a fair and impartial trial in Clermont County, so there is no reason to believe such a request would have been granted. See Crim.R. 18(B). Because Hubbs has shown neither deficient performance nor prejudice, counsel was not ineffective for failing to seek a change of venue.

{¶ 25} We also find that counsel was not ineffective for failing to request a hearing and findings of fact on Hubbs' motion to dismiss. As we explained in our resolution of her second assignment of error, the trial court was not obligated to make findings on issues concerning the merits and substance of the allegations. Because Crim.R. 12(F) did not apply, Hubbs was not prejudiced by the absence of these unnecessary findings.

{¶ 26} Hubbs' third assignment of error is overruled.

III. Conclusion

{¶ 27} Having overruled Hubbs' three assignments of error, the judgment of the trial court is affirmed.

HENDRICKSON, P.J., and SIEBERT, J., concur.

JUDGMENT ENTRY

The assignments of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed.

It is further ordered that a mandate be sent to the Clermont County Court of Common Pleas for execution upon this judgment and that a certified copy of this Opinion and Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed in compliance with App.R. 24.

/s/ Robert A. Hendrickson, Presiding Judge

/s/ Robin N. Piper, Judge

/s/ Melena S. Siebert, Judge