

[Cite as *State v. Goodwin*, 2020-Ohio-5274.]

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	Appellate Case No. 28681
	:	
v.	:	Trial Court Case No. 2018-CR-3878
	:	
TRENDELL GOODWIN	:	(Criminal Appeal from
	:	Common Pleas Court)
	:	
Defendant-Appellant	:	

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OPINION

Rendered on the 13th day of November, 2020.

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FROELICH, J.

{¶ 1} Trendell Goodwin pled guilty to murder with a firearm specification, discharge of a firearm on or near prohibited premises, and felonious assault. The trial court sentenced him to an aggregate term of 18 years to life in prison. Goodwin appeals from his conviction, claiming that the trial court erred in denying his presentence motion to withdraw his plea. For the following reasons, the trial court's judgment will be affirmed.

### I. Facts and Procedural History

{¶ 2} Goodwin's testimony at the hearing on his motion to withdraw his plea provided the following underlying facts.

{¶ 3} On October 2, 2018, LaShonda Childs, Goodwin's ex-girlfriend, and Child's then-boyfriend, Phillip Bonner, went to Goodwin's mother's residence, where Goodwin was staying.<sup>1</sup> Goodwin and Bonner had planned to have a fist-fight. According to Goodwin, Bonner and Childs texted for Goodwin to come outside, and Goodwin exited the home with a handgun wrapped in his shirt. Childs and Bonner started to run up to attack him, but Goodwin pulled out his gun without pointing it at anyone. Goodwin said that he wanted to fight and was leaving the gun on the porch. Goodwin put the gun down and went down to the street.

{¶ 4} Goodwin stated that Childs ran up to the porch to get the gun, but Goodwin chased after her and got the gun instead. Goodwin put the gun in his waistband. Goodwin then told Bonner and Childs to go. Goodwin was standing in the street when Childs and Bonner got into their car. Goodwin stated that Bonner tried to hit him with the

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<sup>1</sup> Goodwin stated that a friend of Bonner's also was with Childs and Bonner, but Bonner's friend stayed by the car. Goodwin did not provide any additional information about Bonner's friend at the hearing.

car when they drove away. Goodwin jumped out of the way, pulled his gun, and shot at the car. At that time, Goodwin was not aware that he had shot anyone. He later learned that he had shot Childs, who died from her injuries.

{¶ 5} Goodwin described his relationship with Childs as “love-hate.” He indicated that Childs had called the police about him several times, and his family members had called the police about Childs. On July 18, 2018, a couple of months before the shooting, Childs had posted a Facebook Live video, which included denigrating comments about Goodwin and threats to use mace and to run over Goodwin with a car. That same day, Childs had gone over to Goodwin’s residence with eight or nine men. Goodwin’s sister was maced during that incident.

{¶ 6} On October 11, 2018, Goodwin was indicted on seven counts related to the October 2 incident:

<i>Count</i>	<i>Offense</i>	<i>Victim</i>	<i>R.C. Statute</i>	<i>Felony</i>
1	Murder (proximate result of felonious assault: serious physical harm)	Childs	2903.02(B)	Unclassified
2	Murder (proximate result of felonious assault: deadly weapon)	Childs	2903.02(B)	Unclassified
3	Felonious assault (serious physical harm)	Childs	2903.11(A)(1)	F2
4	Felonious assault (deadly weapon)	Childs	2903.11(A)(2)	F2
5	Discharge firearm on or near prohibited premises (serious physical harm)	Childs	2923.162(A)(3)	F1
6	Felonious assault (deadly weapon)	Bonner	2903.11(A)(2)	F2
7	Discharge firearm on or near prohibited premises (substantial risk of physical harm/serious harm to property)	Bonner	2923.162(A)(3)	F3

Each offense included a firearm specification.

{¶ 7} Goodwin initially had appointed counsel. Counsel filed a motion to suppress Bonner's pretrial identification of Goodwin. After a hearing, the trial court overruled the motion. The matter was set for a jury trial to begin on April 15, 2019.

{¶ 8} On April 5, 2019, in response to statements by defense counsel at the final pretrial conference that the defense intended to raise self-defense at trial, the State filed a memorandum addressing the retroactivity of H.B. 288, which shifted the burden on self-defense to the prosecutor to prove, beyond a reasonable doubt, that the defendant did not use the alleged force in self-defense. The State asserted that H.B. 288 did not apply retroactively to Goodwin's case; defense counsel filed a responsive memorandum arguing that it did. The court agreed with the State and concluded that H.B. 288 did not apply retroactively.

{¶ 9} On April 10, defense counsel filed a motion for leave to withdraw. The motion indicated that Goodwin had sought to retain counsel and his proposed new counsel attended the final pretrial conference, but the trial court would not permit the substitution because new counsel had stated that he would not be prepared to go to trial on the scheduled trial date. The motion further indicated that defense counsel had met with Goodwin and his family, and they had several grievances. Goodwin informed his attorney that he would not cooperate going forward. Goodwin executed and filed a waiver of his speedy trial time. In July 2019, the trial court allowed defense counsel to withdraw and substituted retained counsel. Trial was rescheduled for September 16, 2019.

{¶ 10} On the scheduled trial date, Goodwin pled guilty to felony murder with a

firearm specification (Count 1), discharge of a firearm on or near prohibited premises (Count 5), and felonious assault (Count 6). In exchange for the pleas, the State agreed to dismiss the remaining counts and specifications. The parties also agreed to a sentence of 15 years to life in prison, plus three years for the firearm specification, for an aggregate sentence of 18 years to life. The court conducted a plea hearing consistent with Crim.R. 11. Because of the agreed sentence, Goodwin waived a presentence investigation, and sentencing was scheduled for September 18, when restitution amounts would be available.

**{¶ 11}** At the September 18 hearing, the trial court indicated that it had received a letter from Goodwin expressing his desire to withdraw his plea. Goodwin said that he understood from the court that he would receive a sentence of 18 years to life, but that his attorney had said only two years were mandatory.<sup>2</sup> Goodwin also said that he did not understand “nearly all of” the plea hearing. Goodwin expressed that the plea hearing “happened so fast” and “didn’t feel right.” The trial court indicated that it would appoint new counsel for Goodwin so that he could discuss the matter with a different attorney, and his new attorney could file a motion to withdraw Goodwin’s plea if Goodwin wanted to proceed that way.

**{¶ 12}** The next day (September 19), the trial court appointed new counsel for Goodwin. Several days later, Goodwin filed a written motion to withdraw his plea. On October 25, he filed an amended motion in which he argued (1) that his retained attorney

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<sup>2</sup> Goodwin and his sister referenced a two-year mandatory sentence per their discussions with defense counsel. This number appears to be based on a mandatory three-year term for the firearm specification, less one year of jail-time credit that Goodwin had earned by the time of the plea hearing.

had misinformed him about the amount of time he would be required to serve before he would be eligible for release and (2) that he had valid defense and/or the facts warranted a jury instruction on manslaughter or on a lesser or inferior offense.

**{¶ 13}** The trial court held a hearing on the motion on October 25 and November 26, 2019. Goodwin and his sister, Sharita, testified on his behalf on October 25. The State presented Goodwin's former retained counsel and Detective David House on November 26. Both parties filed post-hearing memoranda.

**{¶ 14}** On January 7, 2020, the trial court overruled Goodwin's motion. The court concluded that (1) the prejudice to the State did not rise to the level of requiring denial of Goodwin's motion, (2) Goodwin had been represented by competent counsel and counsel's testimony at the hearing on Goodwin's motion about the advice he gave was credible, (3) Goodwin received a full and extensive Crim.R. 11 plea hearing, (4) Goodwin was afforded a full hearing on his motion to withdraw his plea, (5) the timing of Goodwin's motion was reasonable, (6) Goodwin's reasons for withdrawing his plea lacked merit, (7) Goodwin fully understood the nature of the charges, the penalties of his offenses, and the terms of the State's plea offer, and (8) Goodwin did not have a complete defense to the charges.

**{¶ 15}** On January 10, 2020, the trial court sentenced Goodwin to 15 years to life for the murder, plus three years for the firearm specification, to be served consecutively. The court imposed 11 years for the discharge of a firearm offense and 8 years for felonious assault, to be served concurrently with the murder sentence.

**{¶ 16}** Goodwin appeals, challenging the denial of his presentence motion to withdraw his guilty pleas.

## II. Testimony at Hearing on Motion to Withdraw Pleas

{¶ 17} As stated above, Goodwin and his sister, Sharita, testified at the hearing on his motion to withdraw his pleas. At the hearing, Goodwin presented two bases for wanting to withdraw his plea: (1) his retained counsel misrepresented the amount of time he would need to serve in prison prior to his release, and (2) he wanted to be able to raise self-defense or raise the possibility of lesser charges.

{¶ 18} Goodwin testified that his retained attorney represented him for about five months and visited him in jail approximately four times. Goodwin stated that, during the week before trial, his attorney “just kept trying to get me to take a deal. That’s all he wanted me to do, is take a deal. I was telling him I wanted to go to trial the whole time, but he just kept telling me to take this deal. It’s the best deal I got, and that’s about it.” Goodwin testified that his attorney told him that “basically I do 18, but only 3 years were mandatory” because of the gun specification. Goodwin stated that his counsel said that he would be released “super early,” and that he (Goodwin) did not understand that 18 to life meant the he could not get parole until 18 years had been served. Goodwin stated that his family had also said that he could get out before 18 years were served.

{¶ 19} Goodwin further testified that he had not discussed any defenses, including self-defense, with his attorney. Goodwin described his relationship with Childs and the events of October 2. Goodwin also testified about the Facebook Live video that Childs posted on July 18. Goodwin stated that he talked with his attorney about the video, but his attorney said “it wasn’t worth anything.”

{¶ 20} Goodwin also testified that, after entering his plea, he called his attorney later that day and said that he wanted to withdraw plea and that the plea “didn’t feel right.”

Goodwin indicated that, during that conversation, his attorney told him, for the first time, that he would get out of prison in about 17 years. (Goodwin had one year of jail-time credit.) During the motion to withdraw hearing, Goodwin's new counsel asked Goodwin if he understood that he faced a lengthier sentence if his pleas were withdrawn. Goodwin responded that he understood and still wanted to withdraw his plea.

**{¶ 21}** On cross-examination, the prosecutor presented Goodwin with jail records showing that his retained attorney had visited Goodwin 11 times. When shown the jail records, Goodwin acknowledged that he may have "miscalculated" the number of visits by counsel. Goodwin further acknowledged that his attorney knew about the Facebook Live video when Goodwin entered his plea. The prosecutor attempted several times to have Goodwin describe how he jumped out of the way of the car, but Goodwin did not provide a clear description.

**{¶ 22}** Goodwin stated that he had not read the plea forms before signing them and that he had not reviewed them with his attorney before the plea hearing. He said that he had not understood the judge, who was "talking low" that day. Goodwin asserted that he had no understanding of what 18 to life meant, and he did not remember the trial court's asking him about possible defenses. Goodwin acknowledged that he had entered a plea in a prior unrelated case.

**{¶ 23}** Sharita Goodwin testified that she, her mother, and another sister talked to defense counsel on the Friday before the plea hearing. Sharita stated that Goodwin's retained attorney had said that the plan was Goodwin would receive 18 years to life, but Goodwin would only have to serve a mandatory two years for the gun specification and he would be eligible for parole after serving 5 years. Sharita stated that she relayed the



conversation to Goodwin.

**{¶ 24}** Goodwin's retained attorney testified as a State's witness. He indicated that he had been licensed in Ohio since 1984 and had been doing criminal law for his entire career. During his career, retained counsel had tried several murder cases, including one death penalty case.

**{¶ 25}** Retained counsel testified that he took over Goodwin's case when prior counsel withdrew, although there may have been some delay before the court filed its order. Counsel testified that he is known to personnel at the jail due to frequent visits and that the jail records accurately reported his visits with Goodwin.

**{¶ 26}** Retained counsel testified regarding his communications with the prosecutor regarding a potential plea. Counsel stated that he and Goodwin were trying to get to a place where there would be no "life tail" (i.e., Goodwin would receive a definite, rather than indefinite, sentence).<sup>3</sup> The defense had offered a plea to voluntary manslaughter, which the State rejected. The prosecutor left open the possibility of a counteroffer but indicated that any plea would include murder. The State later offered a total sentence of 18 years to life. Counsel stated that he and Goodwin had discussions that this offer was better than a "flat" (i.e., no life tail) offer, because Goodwin could get out of prison earlier. Counsel stated that Goodwin accepted the State's plea offer on September 15, and counsel communicated that to the prosecutor.

**{¶ 27}** Counsel testified that he wrote on paper all of the charges, the possible

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<sup>3</sup> To be precise, "[a] sentence with a 'life tail' is a sentence that is indefinite in length, beginning with the mandatory minimum term the trial court imposes and extending up to a maximum term of life in prison." *State v. Henderson*, Ohio Slip Opinion No. 2020-Ohio-4784, \_\_\_ N.E.3d \_\_\_, ¶ 2, fn.1.

sentence for each charge, and what the plea deal was. Counsel indicated that his chart showed a possible sentence of 37 years to life (with some charges merged).

**{¶ 28}** Counsel testified that he made clear to Goodwin that the earliest Goodwin would be considered for parole would be after serving 18 years. Counsel denied that he had said that Goodwin would serve three years and then be eligible for release after five years. Counsel stated that such a statement would be “ridiculous on this type of a case.” Counsel further testified that he had reviewed the plea forms with Goodwin and that Goodwin knew that he had 18 years minimum to serve. Counsel indicated that he had told Goodwin that his behavior in prison would affect his release, and that the parole board was tending to release prisoners earlier than it used to.

**{¶ 29}** Counsel stated that, as the trial date approached, Goodwin was “remarkably weak on the facts” and kept focusing on things that were irrelevant to the trial but important to him. Counsel stated that he began to wonder about Goodwin’s mental health. Counsel learned that Goodwin was still deeply in love with Childs, which was an impediment to Goodwin’s properly analyzing his case.

**{¶ 30}** Counsel stated that he brought Goodwin’s mother and sister in to his office to discuss where the case was. They had some discussion concerning who was in charge of the parole board and the possibility of going to trial. Counsel explained to them why he thought trial would be a disaster. Counsel stated that he was prepared for trial, but that there was “virtually no question” that the plea deal was better than trial. When asked about his alleged statements that Goodwin would serve three or four years, counsel stated that someone would need to “deliberately misinterpret what I said.”

**{¶ 31}** When asked about whether he pressured Goodwin to enter a plea, counsel

disagreed. He stated that he had strong opinions and was “very open with [his] analysis of the case.” Counsel stated that they had talked about “every aspect of the potential evidence” and that he was clear that he did not think that self-defense was viable. Counsel had received a flash drive with the July 18 Facebook Live recording from Goodwin and his mother. Goodwin wanted to believe that the posse attack/Facebook post from July supported a self-defense claim. Counsel stated, however, that there was unfavorable evidence, such as texts and social media posts, and that Goodwin ignored all of the evidence that was unfavorable.

**{¶ 32}** Counsel stated that Goodwin called on the day of or the day after the plea hearing, expressing that he wanted to withdraw his plea. Goodwin spoke to counsel’s assistant and later to counsel. Counsel indicated that Goodwin basically thought “the crime wasn’t worth the time” and he really wanted “flat time.” Goodwin did not express that he did not want to enter the agreed plea, but Goodwin thought he could get less time if he spoke to the judge. Counsel thought that Goodwin was resistant to being punished for the incident.

**{¶ 33}** Finally, Detective David House testified for the State about possible prejudice to the State caused by the delay. The detective testified that, as part of trial preparation, he serves subpoenas on witnesses. In Goodwin’s case, Detective House was able to personally serve all lay witnesses for the April trial date, and all lay witnesses attended the pretrial conference. House indicated that he had a harder time serving witnesses for the September trial date; at least two witnesses were not served and did not attend the pretrial conference. One of the people who was not served was an eyewitness to the incident. House testified that, as time goes on, cooperation from

witnesses generally goes down and memories fade.

{¶ 34} House also testified that he obtained the recording of a September 17 jail phone call between Goodwin and his family about his pleas. During that conversation, Goodwin said that his attorney had lied about the potential sentence; however, Goodwin's family said that counsel did not lie. House stated that Sharita was not a party to this jail phone call.

### III. Attorney-Client Privilege

{¶ 35} Although not specifically raised as an assignment of error, Goodwin argues in his appellate brief that the trial court allowed the prosecutor to elicit testimony from retained counsel that "went beyond the conversations about their discussion concerning the plea deal." Rather, "trial counsel went on to discuss what Goodwin told him about the facts of the case and his guilt or innocence." Goodwin claims that these discussions should have remained privileged. In addition, Goodwin asserts that the prosecutor should not have questioned him about his self-defense claim and his prior conviction and should not have attacked his credibility. Goodwin asserts that this evidence was irrelevant and should not have been considered by the trial court.

{¶ 36} In Ohio, the attorney-client privilege is governed both by statute, R.C. 2317.02(A), which provides a testimonial privilege, and by common law, which broadly protects against any dissemination of information obtained in the confidential attorney-client relationship. *State ex rel. Toledo Blade Co. v. Toledo-Lucas Cty. Port Auth.*, 121 Ohio St.3d 537, 2009-Ohio-1767, 905 N.E.2d 1221, ¶ 24. However, R.C. 2317.02(A)(1) provides that a client waives any testimonial privilege by voluntarily revealing the substance of attorney-client communications.

{¶ 37} In *State v. Houck*, 2d Dist. Miami No. 09-CA-08, 2010-Ohio-743, the appellant had filed a motion to withdraw her plea and objected when the State called her trial attorney to testify. We concluded that once Houck had testified concerning the substance of her communication with her trial attorney about whether to tender a plea, that communication was no longer confidential and privileged. *Id.* at ¶ 3. We stated:

Here, [Appellant] unequivocally waived the confidential, privileged nature of her communication with [her trial attorney] concerning whether she should plead guilty to the charged offense, when she testified concerning the communication, including what [her trial attorney] had advised her. She may not publish to the world her attorney's advice to her and expect that it will thereafter remain privileged.

A ruling to the contrary would permit anyone, in either criminal or civil litigation, to claim with impunity that she was acting on advice of counsel, without permitting her former counsel to be asked, by adverse parties, whether that was, in fact, counsel's advice. The attorney-client privilege is a shield, to protect the confidentiality of a client's consultation with her attorney, not a sword to facilitate perjury concerning the substance of counsel's advice.

*Id.* at ¶ 37-38. See also *State v. Hale*, 8th Dist. Cuyahoga No. 107646, 2019-Ohio-3276.

{¶ 38} In this case, Goodwin asserted that he had pled guilty to three charges because his attorney misled him regarding the amount of time that he would serve and he wanted to raise self-defense or establish that a lesser offense applied. His direct testimony at the hearing discussed his retained counsel's communications regarding

potential pleas, particularly the number of meetings he and his attorney had and their communications concerning the amount of time that Goodwin would serve. Goodwin expressed that he felt coerced to take the plea and that his attorney had misinformed him about the time he would need to serve before his release.

**{¶ 39}** In addition, in support of his claim that he had a viable defense, Goodwin testified about the underlying facts of the case and Childs's July 18 Facebook Live post. Prior to this testimony, the prosecutor raised with the trial court whether Goodwin needed to be advised that his statements could be used against him in future proceedings. Defense counsel responded, "Well, I think I'm at a rock and a hard place because in order to justify the reason for withdrawal, he has to go into this. So I mean, if we go to trial, he's going to have to testify anyway, because of the nature of the defense. Because otherwise, we don't have any proof to even have this Court consider it. There's just no validity to the argument." The court advised Goodwin that he did not have to testify and that any statements he made could be used against him later at trial. Goodwin indicated that he understood. Upon further questioning by defense counsel, Goodwin stated that he was willing to testify to support any defenses he may have.

**{¶ 40}** Goodwin's testimony waived his attorney-client privilege not only with respect to the communications regarding the terms of the plea, but also with respect to whether Goodwin had a viable defense to the charges. Given Goodwin's testimony, the prosecutor was not precluded by attorney-client privilege from questioning Goodwin's counsel about the viability of self-defense and whether counsel was aware of the factual bases for the potential defense prior to the plea. Moreover, once Goodwin testified, the prosecutor reasonably challenged Goodwin's credibility, including by raising the fact that

he had previously entered a plea in another case and by questioning him about his self-defense argument. Goodwin's assertion that his retained counsel testified to matters that should have remained privileged is without merit.

#### **IV. Goodwin's Motion to Withdraw Plea**

{¶ 41} In his sole assignment of error, Goodwin claims that the trial court erred in denying his presentence motion to withdraw his plea.

{¶ 42} Crim.R. 32.1 provides that "[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."

{¶ 43} The presentence standard is far more lenient than the "manifest injustice" standard applicable to post-sentence motions. *State v. Fugate*, 2d Dist. Montgomery No. 21574, 2007-Ohio-26, ¶ 10. Under Crim.R. 32.1, a presentence motion to withdraw a guilty plea "should be freely and liberally granted." *State v. Xie*, 62 Ohio St.3d 521, 527, 584 N.E.2d 715 (1992). Even before sentencing, however, "the right to withdraw a plea is not absolute and a trial court retains discretion to overrule a pre-sentence plea-withdrawal motion." *State v. Simpson*, 2d Dist. Montgomery No. 24266, 2011-Ohio-6181, ¶ 7.

{¶ 44} At the outset, we agree with the trial court's use of the standard for presentence motions to withdraw a plea. Whether a motion is treated as a presentence or postsentence motion often depends on whether the defendant has learned of the trial court's intended sentence prior to filing the motion. Generally, when a motion to withdraw a plea is made before sentencing, but after learning of the imminent sentence

to be imposed, the motion is considered to be filed after sentencing. *E.g.*, *State v. Kennard*, 2d Dist. Montgomery No. 27681, 2018-Ohio-2752, ¶ 23; *State v. Haney*, 2d Dist. Montgomery No. 25344, 2013-Ohio-1924, ¶ 10. This is so because a defendant cannot test the sentencing waters and then move to vacate his or her plea just before sentencing if he or she receives an unpleasant surprise. *Simpson* at ¶ 7.

{¶ 45} However, this rationale does not apply when the plea agreement includes an agreed sentence, as is the case here. *Id.*; *State v. Williams*, 2d Dist. Montgomery No. 26635, 2016-Ohio-5655, ¶ 11. As we explained in *Simpson*:

“Where a sentence is agreed to as part of a plea bargain, and the trial court has indicated that it is joining in the agreement, there has been no ‘unpleasant surprise’ to the defendant after ‘testing the sentencing waters,’ which is the rationale for the stricter standard for a post-sentence motion to withdraw a plea.” [*State v. Wallen*, 2d Dist. Montgomery No. 21688, 2007-Ohio-2129, ¶ 22]. Therefore, when a defendant files a pre-sentence motion to vacate a plea entered as part of a plea deal with an agreed sentence, the motion still should be treated as a pre-sentence motion and judged under the more lenient standard. *Id.*; *see, also, State v. Williamson*, Montgomery App. No. 21965, 2008-Ohio-4727, ¶ 11. On the other hand, the fact that the defendant knew what the ultimate sentence would be may be a factor that the trial court could consider to determine whether the defendant’s request to withdraw is simply a change of heart.

*Simpson* at ¶ 7.

{¶ 46} When reviewing a trial court’s decision on a defendant’s motion to withdraw



his or her plea filed before sentencing, we apply the following nine factors: (1) whether the accused was represented by highly competent counsel, (2) whether the accused was given a full Crim.R. 11 hearing before entering the plea, (3) whether a full hearing was held on the motion, (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 sets out specific reasons for the withdrawal, (7) whether the accused understood the nature of the charges and possible penalties, (8) whether the accused was perhaps not guilty of or had a complete defense to the charge or charges, and (9) whether the state is prejudiced by withdrawal of the plea. *E.g.*, *State v. Becraft*, 2017-Ohio-1464, 89 N.E.3d 218 (2d Dist.); *State v. Warrix*, 2d Dist. Montgomery No. 26556, 2015-Ohio-5390, ¶ 29.

{¶ 47} “In considering these factors, the trial court employs a balancing test; no single factor is dispositive.” *Warrix* at ¶ 30, citing *State v. Preston*, 2d Dist. Montgomery No. 25393, 2013-Ohio-4404, ¶ 20. However, “[t]he ultimate question for the trial court is whether there is a ‘reasonable and legitimate basis for the withdrawal of the plea.’ ” *Id.*, quoting *Xie* at 527. A change of heart or mistaken belief about the plea is not a reasonable basis requiring a trial court to permit the defendant to withdraw his or her plea. *State v. Maddickes*, 2d Dist. Clark No. 2013-CA-7, 2013-Ohio-4510, ¶ 15. However, in considering whether to allow withdrawal of the plea, it is not sufficient for the trial court simply to find that the Crim.R. 11 colloquy satisfied the requirements of that Rule and the United States and Ohio Constitutions; if it were, even a presentence plea could never be withdrawn. *Id.*

{¶ 48} “Decisions regarding the credibility of witnesses are primarily for the trial court to make, given that the trial judge, as the finder of fact at the hearing on the motion

to withdraw the plea, saw and heard the witnesses' testimony." *State v. Hess*, 2d Dist. Montgomery No. 24453, 2012-Ohio-961, ¶ 22. In addition, it is within the sound discretion of the trial court to grant or deny a motion to withdraw a plea. *Xie*, 62 Ohio St.3d 521, 526, 584 N.E.2d 715. We will not reverse a trial court's decision to deny a motion to withdraw a guilty or no contest plea absent an abuse of discretion. *Id.* at 527, citing *State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980).

**{¶ 49}** We have reviewed the transcript of the plea hearing, and the trial court fully complied with its obligations under Crim.R. 11. As part of the plea colloquy, the trial court reviewed the potential sentences that Goodwin could receive for the three offenses to which he was pleading guilty. Of relevance here, the court notified Goodwin that the court could sentence him to a term of 15 years to life for the murder, that the court was required to sentence him to a period of three years on the firearm specification, which must run prior to and consecutive to the murder time that the trial court would impose. The court further indicated that Goodwin would be required to register as a violent offender for the murder charge. In addition, the court stated:

And do you understand, sir, that being a plea to the murder and the firearm specification, that these are mandatory sentences, and that the firearm specification is a mandatory consecutive sentence that the Court must sentence you to prison on. And because this is a mandatory and cannot - and so it cannot be reduced by any earned credit, judicial release, or furlough.

**{¶ 50}** Goodwin expressed that he understood each of these advisements. Goodwin denied that he had been promised anything other than the plea deal to induce

his plea. Goodwin stated that he had an opportunity to discuss all elements of his case and possible defenses with his attorney and that he was satisfied with his attorney's representation. Goodwin told the court that he was entering his pleas voluntarily, and he signed the plea forms. When asked if he had understood everything up to that point, Goodwin responded, "I understand everything."

{¶ 51} The plea form for the murder charge and accompanying firearm specification indicated that the sentence could include financial sanctions, including up to a \$15,000 fine, court costs, restitution, and other financial sanction. The form stated that the prison sentence for murder was "15 YEARS TO LIFE (for this offense); plus the prison term for MURDER is mandatory and cannot be reduced by judicial release, earned credit, or furlough; plus **Mandatory, consecutive prison term of 3 YEARS** for the firearm specification to be served first[.]" (Capitalization and emphasis sic.) The plea form further provided: "**I understand that if I am ever released from prison, I shall serve a term of Parole for up to life for this count of Murder[.]**" and "**I understand that, per the plea agreement, my total sentence will be eighteen (18) years to life in prison.**" (Emphasis sic.)

{¶ 52} The record reflects that Goodwin was represented by highly competent counsel at the plea hearing. Goodwin's retained counsel has been a licensed attorney since 1984 and has practiced criminal law throughout his career. His career began as an assistant prosecutor, following which he practiced criminal defense law. He has represented several clients charged with homicide, including a death penalty case.

{¶ 53} Goodwin expressed his desire to withdraw his pleas on the day of the plea hearing, both by contacting his defense counsel and the trial court. Goodwin reiterated

his desire to withdraw his pleas at the scheduled sentencing hearing on September 18. Goodwin's request was timely. Goodwin's subsequent written motion to withdraw his pleas set out specific reasons for the request to withdraw his pleas.

**{¶ 54}** The trial court conducted a full hearing on Goodwin's motion to withdraw his pleas, hearing testimony from four witnesses. The parties filed post-hearing memoranda, and the trial court's decision reflects that the court gave full and fair consideration to the motion.

**{¶ 55}** Goodwin's testimony at the plea hearing indicated that he understood the nature of the charges and possible penalties that he could receive. Goodwin stated that he understood that the agreed total sentence for the three charges to which he was entering a plea would be 18 years to life in prison; the court clarified that the sentence was comprised of 15 years to life for the murder, plus three years for the firearm specification. The plea form for the murder charge further stated that he could be sentenced to a prison term of "15 YEARS TO LIFE (for this offense); plus the prison for MURDER is mandatory and cannot be reduced by judicial release, earned credit, or furlough[.]" (Capitalization sic.) At the end of the plea hearing, Goodwin stated that he had understood "everything."

**{¶ 56}** Goodwin testified at the hearing on his motion to withdraw his plea that he did not understand that he would need to serve a minimum of 18 years before he was eligible for parole and that he understood little of what was said at the plea hearing. Goodwin further testified that he had not reviewed the plea forms with his attorney prior to the plea hearing. In contrast, Goodwin's counsel testified that he reviewed the plea forms with Goodwin and that Goodwin knew that he had to serve a minimum of 18 years.

**{¶ 57}** The trial court found that retained counsel “credibly testified that he spoke with Defendant at length about the terms of the plea agreement, as well as the possible sentence Defendant could receive if convicted by a jury.” In its ruling, the court indicated that it had listened to the recording of the phone call Goodwin made to his family from the jail on September 17, 2019, the day after he entered his plea. During that phone call, Goodwin told his sister that his attorney had lied to them about the sentence he would receive if he pled guilty, but his sister disagreed. She repeatedly told Goodwin that his attorney did not lie. When Goodwin asked her to call and tell the judge’s bailiff what his attorney had promised, his sister responded, “And that’s what you’re getting.” She told Goodwin that she had listened to everything that was said during the plea hearing. The trial court reasonably credited Goodwin’s retained counsel’s version of events over Goodwin’s.

**{¶ 58}** In addition, Goodwin did not establish that he was perhaps not guilty of or had a complete defense to the charges. Goodwin admitted that he shot Childs. He testified that he shot at the car because Bonner had tried to run him over. He pointed to Childs’s July 18 Facebook Live video as evidence that his fear was reasonable. Goodwin’s counsel testified that he was aware of the video and that he did not believe that Goodwin had a viable claim of self-defense, which he conveyed to Goodwin. Counsel indicated that there was other evidence which would have undermined Goodwin’s self-defense argument, but Goodwin was not willing to acknowledge that evidence. The trial court reasonably concluded that Goodwin’s retained counsel “made an assessment of the value of the evidence, based on his professional experience, and Defendant disagreed with that assessment. Such a disagreement is not a sufficient

basis for withdrawing his plea, however.”

{¶ 59} Finally, the State presented evidence that it would be prejudiced by withdrawal of the plea. Detective House testified that cooperation by witnesses decreases with each rescheduled trial date, and he already had been unable to serve a subpoena on an eyewitness for the last trial date. The trial court recognized the prejudice to the State, although it did not find it to be sufficient, alone, to deny Goodwin’s motion.

{¶ 60} In short, we cannot conclude that the trial court abused its discretion in denying Goodwin’s presentence motion to withdraw his plea. Upon consideration of the record and the trial court’s reasonable factual findings, only the timeliness factor weighed in favor of granting Goodwin’s motion. The record supported a conclusion that Goodwin sought to withdraw his plea because, in retrospect, it “didn’t feel right” and he had a change of heart. Accordingly, Goodwin’s assignment of error is overruled.

**V. Conclusion**

{¶ 61} The trial court’s judgment will be affirmed.

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DONOVAN, J. and WELBAUM, J., concur.

Copies sent to:

- Mathias H. Heck, Jr.
- Heather N. Ketter
- Ben M. Swift
- Hon. Dennis J. Adkins