[Cite as *State v. Harmon*, 2021-Ohio-2610.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
PICKAWAY COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. 20CA6
vs.	:	
RICHARD P. HARMON,	:	DECISION & JUDGMENT ENTRY
Defendant-Appellant.	:	

APPEARANCES:

Joe Landusky, Columbus, Ohio for appellant.[1]

Judy C. Wolford, Pickaway County Prosecuting Attorney, and Jayme Hartley Fountain, Assistant Prosecuting Attorney, Circleville, Ohio, for appellee.

CRIMINAL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED:7-23-21
ABELE, J.

{¶1} This is an appeal from a Pickaway County Common Pleas Court judgment of conviction and sentence for the operation of a motor vehicle while under the influence of alcohol or drug of abuse. Richard P. Harmon, defendant below and appellant herein, assigns the following errors for review:

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[1] Different counsel represented appellant during the trial court's plea proceedings.

FIRST ASSIGNMENT OF ERROR:

"THE TRIAL COURT ABUSED ITS DISCRETION IN OVERRULING APPELLANT'S MOTION TO WITHDRAW PLEA HIS [SIC] BEFORE SENTENCING. (TRANSCRIPT P. 17)."

SECOND ASSIGNMENT OF ERROR:

"THE TRIAL COURT ERRED IN FAILING TO GRANT A FULL HEARING ON APPELLANT'S MOTION TO WITHDRAW PLEA. (TRANSCRIPT P. 17)."

{¶2} On October 3, 2019, a Pickaway County Grand Jury returned an indictment that charged appellant with one count of operating a motor vehicle while under the influence of alcohol or drug of abuse in violation of R.C. 4511.19(A)(1)(j)(v), a fourth-degree felony. Appellant entered a not guilty plea.

{¶3} On May 28, 2020, appellant pleaded guilty to the charge. The trial court accepted appellant's plea and scheduled a July 29, 2020 sentencing hearing. On July 25, 2020, through new counsel, appellant filed a motion to withdraw his guilty plea. Appellant, inter alia, claimed that prior counsel informed him that if he exercised his right to a jury trial, and if the jury found him guilty, the trial court would impose a maximum sentence. Further, appellant argued that he has maintained his innocence, intends to challenge the scientific tests, and suffers from an intellectual dysfunction. Additionally, appellant's written motion asserted that appellant

"had no alcohol in his system at the time of the stop."

{¶4} At the July 29, 2020 sentencing hearing, appellant, appellee, appellant's plea counsel, and appellant's new counsel were present. Defense counsel addressed the motion to withdraw appellant's guilty plea and cited Crim.R. 32.1(A)(1) and *State v. Xie*, 62 Ohio St.3d 521, 584 N.E.2d 715 (1992) for the proposition that a request to withdraw a plea prior to sentencing "should be freely and liberally granted." Counsel argued that his client maintains his innocence, has medical evidence to dispute the state's test, suffers from "serious brain damage," and that plea counsel met with him for "less than an hour total." Appellee, however, objected to the motion, referenced an "extensive conversation" with appellant's counsel during plea negotiations, and indicated that appellee recommended a 30 month prison term with judicial release after 12 months, the state's standard position with felony OVI cases.

{¶5} First, the trial court expressed skepticism that plea counsel would have advised appellant to plead guilty under threat of a maximum sentence after a trial. The court further noted that appellant received a full Crim.R. 11 hearing, acknowledged in writing the 30 month prison sentence, the $10,500 fine and the license suspension. The court stated: "He knew all that, accepted the plea, I went through it with him.

Seems to me that he's just had a change of heart with respect to the outcome of this case, and based on his record, I can see why. He's got a terrible record."

{¶6} After counsel reiterated the *Xie* standard, the trial court cited *State v. Sarver,* 4th Dist. Washington No. 17CA27, 17CA28, 17CA29, 2018-Ohio-2796, overruled appellant's motion and proceeded to sentencing. At sentencing appellant stated:

> I'm sorry but my intellect on comprehension was explained by the surgery that I had, which was explained through my surgeon and certified. And my urine screen with my local physician came back that I had about three alcohol (inaudible).[2] This was sixteen hours after the traffic stop, and there was other issues with testifying, the lab technician, and there was intake secured for me when the bond was suppose to be done on there. And I was under the assumption that I was over under the Revised Code. I don't believe that was my hearing, but I was never advised that the court would find me guilty without reasonable doubt because of, you know, I was advised of, not that I was prepared for the amount of the Revised Code, it was the contact. But I do not believe that that was my duty at all. [sic]

{¶7} After the trial court reviewed appellant's extensive criminal record, including multiple drug-related convictions, assault, receiving stolen property, resisting arrest, and five prior OMVI convictions, the court ordered appellant to: (1) serve 30 months in prison, including 3 years of community

[2] Appellant's statement concerning alcohol consumption appears to vary with the written motion that asserted that appellant had no alcohol in his system at the time of the stop.

control, (2) pay a $2,500 fine, and (3) undergo a life-time operator's license suspension. This appeal followed.

I.

{¶8} In his first assignment of error, appellant asserts that the trial court's decision to overrule his presentence motion to withdraw his guilty plea constitutes an abuse of discretion. In his second assignment of error, appellant asserts that the trial court improperly failed to conduct a full hearing on his motion to withdraw his guilty plea. For ease of discussion, we address both assignments of error together.

A.

{¶9} Initially, we note that trial courts possess discretion to decide whether to grant or to deny a presentence motion to withdraw a guilty plea. *State v. Xie,* 62 Ohio St.3d 521, 584 N.E.2d 715 (1992), paragraph two of the syllabus. Absent an abuse of discretion, appellate courts will not disturb a trial court's ruling concerning a motion to withdraw a guilty plea. *Id.* at 527, 584 N.E.3d 715. An "abuse of discretion" means that the court acted in an " ' unreasonable, arbitrary, or unconscionable' " manner or employed " 'a view or action that no conscientious judge could honestly have taken.' " *State v. Kirkland*, 140 Ohio St.3d 73, 2014-Ohio-1966, 15 N.E.3d 818, ¶

67, quoting *State v. Brady*, 119 Ohio St.3d 375, 2008-Ohio-4493, 894 N.E.2d 671, ¶ 23. A trial court generally abuses its discretion when it fails to engage in a " 'sound reasoning process.' " *State v. Morris*, 132 Ohio St.3d 337, 2012-Ohio-2407, 972 N.E.2d 528, ¶ 14, quoting *AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990). Additionally, "[a]buse-of-discretion review is deferential and does not permit an appellate court to simply substitute its judgment for that of the trial court." *State v. Darmond*, 135 Ohio St.3d 343, 2013-Ohio-966, 986 N.E.2d 971, ¶ 34.

B.

{¶10} Crim.R. 32.1 provides: "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." Crim.R. 32.1 permits a defendant to file a motion to withdraw a guilty plea before sentence is imposed.

{¶11} Although trial courts should "freely and liberally" grant a presentence motion to withdraw a guilty plea, a defendant does not "have an absolute right to withdraw a guilty plea prior to sentencing." *Xie* at 527; *accord State v.*

Ketterer, 126 Ohio St.3d 448, 2010-Ohio-3831, 935 N.E.2d 9, ¶ 57; *State v. Spivey*, 81 Ohio St.3d 405, 415, 692 N.E.2d 151 (1998); *State v. Wolfson*, 4th Dist. Lawrence No. 02CA28, 2003-Ohio-4440, ¶ 14. Instead, "[a] trial court must conduct a hearing to determine whether there is a reasonable and legitimate basis for the withdrawal of the plea." *Xie* at paragraph one of the syllabus.

{¶12} This court and others have identified nine factors that appellate courts should consider when reviewing a trial court's decision regarding a presentence motion to withdraw a guilty plea:

> (1) "whether 'highly competent counsel' represented the defendant; (2) whether the trial court afforded the defendant 'a full Crim.R. 11 hearing before entering the plea'; (3) whether the trial court held 'a full hearing' regarding the defendant's motion to withdraw; (4) 'whether the trial court gave full and fair consideration to the motion'; (5) whether the defendant filed the motion within a reasonable time, (6) whether the defendant's motion gave specific reasons for the withdrawal; (7) whether the defendant understood the nature of the charges, the possible penalties, and the consequences of his plea; (8) whether the defendant is 'perhaps not guilty or ha[s] a complete defense to the charges'; and (9) whether permitting the defendant to withdraw his plea will prejudice the state."

State v. McNeil, 146 Ohio App.3d 173, 176, 765 N.E.2d 884 (1st Dist.2001), citing *State v. Peterseim,* 68 Ohio App.2d 211, 214, 428 N.E.2d 863 (8th Dist.1980), and *State v. Fish*, 104 Ohio

App.3d 236, 240, 661 N.E.2d 788 (1st Dist.1995), *rev'd on other grounds by State v. Sims,* 2017-Ohio-8379, 99 N.E.3d 1056 (1st Dist.); *e.g., State v. Jones*, 10th Dist. Franklin No. 15AP-530, 2016-Ohio-951, ¶ 14; *State v. Campbell,* 4th Dist. Athens No. 08CA31, 2009-Ohio-4992, ¶ 7; *State v. Harmon*, 4th Dist. Pickaway No. 04CA22, 2005-Ohio-1974, ¶ 22. " ' Consideration of the factors is a balancing test, and no one factor is conclusive.' " *Jones* at ¶ 14, quoting *State v. Zimmerman*, 10th Dist. Franklin No. 09AP-866, 2010-Ohio-4087, ¶ 13; *accord State v. Crawford*, 2d Dist. Montgomery No. 27046, 2017-Ohio-308, ¶ 12. " 'The ultimate question is whether there exists a "reasonable and legitimate basis for the withdrawal of the plea." ' " *Sarver,* 4th Dist. Washington No. 17CA27, 17CA28, 17CA29, 2018-Ohio-2796 at ¶ 33, quoting *State v. Delpinal*, 2d Dist. Clark Nos. 2015-CA-97 and 2015CA98, 2016-Ohio-5646, ¶ 9, quoting *Xie*, 62 Ohio St.3d at 527; *accord Crawford* at ¶ 12. A mere change of heart, however, is not a legitimate and reasonable basis for the withdrawal of a plea. *E.g., Campbell* at ¶ 7; *Harmon* at ¶ 22.

{¶13} We begin our analysis with a review of the nine court-recognized factors.

1.

{¶14} Appellant concedes that it is difficult to discern, based on the record, whether appellant had the benefit of highly

competent plea counsel. Appellant pleaded guilty to the charge in the indictment, and now asserts that counsel informed him that, if he exercised his jury trial right, the trial court would impose the maximum sentence.

{¶15} We begin with the presumption that appellant's counsel was competent. *State v. Delaney*, 4th Dist. Jackson No. 19CA9, 2020-Ohio-7036, ¶ 25; *State v. Shifflet,* 2015-Ohio-4250, 44 N.E.3d 966, ¶ 37 (4th Dist.). Further, " ' an attorney's advice to take a plea deal is not ineffective assistance of counsel.' " *State v. Robinson*, 12th Dist. Butler No. CA2013-05-085, 2013-Ohio-5672, ¶ 23, quoting *State v. Shugart*, 7th Dist. Mahoning No. 08 MA 238, 2009-Ohio-6807, ¶ 37; *State v. Howard,* 2017-Ohio-9392, 103 N.E.3d 108, ¶ 30 (4th Dist.). As we noted in *Delaney,* appellant in the case sub judice did not raise an ineffective assistance of counsel claim, nor did he call trial counsel as a witness. *Delaney* at ¶ 25. Thus, we have only appellant's contentions to examine. A trial court is not obligated to credit a defendant's contention that trial counsel made such statements, or otherwise coerced a defendant to accept a plea agreement. *See Howard* at ¶ 29. Moreover, although appellant's plea counsel may have been present in the courtroom during the motion hearing, counsel did not testify. Thus, we presume that counsel provided competent representation and this factor weighs

in appellee's favor.

2.

{¶16} Appellant concedes that before he entered his plea, the trial court afforded appellant a full Crim.R. 11 hearing. Thus, the second factor weighs in appellee's favor.

3.

{¶17} Appellant contends that he did not receive a full and meaningful hearing on his motion to withdraw his plea. Although a trial court possesses discretion to determine whether to grant or to deny a presentence motion to withdraw a guilty plea, the court does not have the discretion to determine if a hearing is required. *Howard* at ¶ 22; *see also Wolfson* at ¶ 15. Instead, a court has a mandatory duty to hold a hearing on a presentence motion to withdraw a guilty plea. *Xie* at paragraph one of the syllabus; *State v. Leonhart*, 4th Dist. Washington No. 13CA38, 2014-Ohio-5601, ¶ 50; *State v. Burchett*, 4th Dist. Scioto No. 11CA3445, 2013-Ohio-1815, ¶ 13; *Wolfson* at ¶ 15; *State v. Wright,* 4th Dist. Highland No. 94-CA-853, 1995 WL 368319 (June 19, 1995).

{¶18} "While *Xie* states that a hearing is mandatory, it does not define the type of hearing that is required." *Wolfson* at ¶ 16. This court has concluded, however, that "a hearing complying with at least the minimum mandates of due process is

necessary." *Id.*; citing *Wright*; *accord State v. Robinson*, 8th Dist. Cuyahoga No. 89651, 2008-Ohio-4866, ¶ 24 (noting that although the *Xie* court did not define the type of hearing required, "it is axiomatic that such hearing must comport with the minimum standards of due process"). In *Wolfson*, we explained that, although a trial court "must afford the defendant meaningful notice and a meaningful opportunity to be heard," the court nonetheless retains discretion to define the scope of the hearing to " 'reflect the substantive merits of the motion.' " *Id.* at ¶ 16, quoting *Wright* at *6, and citing *State v. Smith,* 8th Dist. Cuyahoga No. 61464, 1992 WL 369273, *5 (Dec. 10, 1992).

{¶19} Additionally, a trial court need not "schedule a separate hearing" to comply with minimum due process standards. *State v. Glavic*, 143 Ohio App.3d 583, 589, 758 N.E.2d 728 (11th Dist.2001). Instead, as long as a court affords a defendant "an opportunity at a hearing to assert to the court the reasons why the [defendant] should be able to withdraw his plea, he has been given a 'full and actual hearing on the merits.' " *State v. Maistros*, 8th Dist. Cuyahoga No. 43835, 1982 WL 5253, *3 (Mar.25, 1982) (internal citation omitted); *accord State v. Hall*, 8th Dist. Cuyahoga No. 55289, 1989 WL 42253, *2 (Apr.27, 1989).

{¶20} A trial court, however, need not conduct a full evidentiary hearing if a defendant fails to " 'make a prima facie showing of merit * * *. This approach strikes a fair balance between fairness to the accused and the preservation of judicial resources.' " *Smith* at *5; quoting *Hall* at *1; *accord Wright* at *6. However, "[b]old assertions without evidentiary support" ordinarily will not merit a full evidentiary hearing. *Hall* at *1; *e.g., Davis, supra,* at ¶ 10; *Wolfson* at ¶ 16; *Smith*, *supra; Wright* at *6.

{¶21} In the case sub judice, the trial court advised the parties at the July 29, 2020 hearing that sentencing was the matter before the court. The court stated:

> The court notes that Mr. Harmon is present with Mr. Hall who was representing him at the time of the plea, the court now has received, at least the clerk's office received, a notice of appearance filed by Mr. Joseph Landusky, II, on behalf of Mr. Harmon. That was on July 24th, and also filed on July 24th was a motion to withdraw plea.

When the court permitted new counsel to "speak to [his] motion," counsel stated:

> I can put my client on the stand, it's my understanding from day one he has maintained his innocence. He had no alcohol in his system when he was stopped, there's a question about the stop itself. There was a test that he was ordered to take as far as the charge here is concerned. There's some other evidence that the court has not heard about. I don't know if the state has heard about it, but there was said to be certain metabolites that could perhaps make

> him look guilty of driving under the influence.
>
> He tells me that he met with his attorney for less than an hour total in this matter, and that he presented his attorney, and this isn't to cast any incursions [sic] on his attorney, that isn't what this is about. But he also presented medical evidence that within twenty-four hours of his being stopped he had his own doctor test him. And the results of that test, which may have been different and may have helped to explain the fact that my client, who suffers from some serious brain damage, he had an operation back in, I believe, the last year or two years ago because of problems of an assault that took place on him.
>
> He was warned that if he did not plead guilty to the indictment, I believe, or the main charge, that he was going to lose the case and he was going to get maxed on his sentence. He was told, I don't know whether or not it's true, but that the policy of this court is if you go to trial and you lose, you get maxed. And so he said he was scared. He believes he's actually innocent of this matter.
>
> We're merely asking that he be permitted and in accordance with the Supreme Court of Ohio to withdraw his plea and set this case perhaps for a pre-trial. I would certainly waive time. I think its been waived in the past, but there is a lot of issues in regard to his actual innocence in this matter, and I'm asking respectfully that he be permitted to withdraw his plea.
>
> At this time, if you would like me to put on evidence, we will do that. But I take leave, I've stated enough to the court and in the interest of justice to give him his day in court for trial. And I understand the plea went through and he admitted his guilt, your honor, but he said he was under pressure to do that. Thank you, sir. (Tr. 11-13)

{¶22} Appellee's counsel responded that she had an extensive conversation with appellant's plea counsel and that her

recommendation "was a thirty-month prison term with judicial * * * after twelve months * * *. That has been my standard position with these felony OVI cases, your honor. * * * I am sure that Mr. Hall advised Mr. Harmon of that."

{¶23} At that juncture, the trial court indicated that appellant's plea counsel:

> "is standing right there. I find it hard to believe, * * * knowing Mr. Hall, a very competent lawyer who has practiced for years in this court, I can't believe he's going to tell him that he's going to get maxed for exercising his right to go to trial. I've never done that in twenty-five years on the bench. I find it hard to believe that anybody would make that representation to Mr. Harmon."

The court then referenced the full Crim.R. 11 hearing and appellant's signed plea form:

> "indicating the maximum stated prison sentence is thirty months, $10,500.00 fine, and a license suspension. He knew all that, accepted the plea, I went through it with him. Seems to me that he's just had a change of heart with respect to the outcome of this case, and based on his record, I can see why. He's got a terrible record."

{¶24} After the trial court cited *State v. Sarver*, 4th Dist. Washington No. 17CA27, 17CA28, 17CA29, 2018-Ohio-2796 and concluded that appellant "just had a change of heart," the court overruled appellant's motion. Counsel responded that appellant did not challenge the sentence, but had medical evidence to prove actual innocence.

{¶25} As previously indicated, a trial court is not required to postpone a sentencing hearing in order to hold a separate and distinct hearing on a motion to withdraw a plea. *State v. Williams*, 7th Dist. Mahoning No. 11 MA 131, 2012-Ohio-6277, ¶ 10. If a trial court invites and hears argument on a motion to withdraw a guilty plea at a sentencing hearing before it imposes sentence, this procedure may constitute a full and fair motion hearing. *State v. Griffin*, 8th Dist. Cuyahoga No. 82832, 2004-Ohio-1246, ¶ 18, citing *State v. Holloman*, 2d Dist. Greene No. 2000 CA 82, 2001 WL 699533 (June 22, 2001), *State v. Mooty*, 2d Dist. Greene No. 2000 CA 72, 2001-Ohio-1464. Appellant cites *State v. Robinson*, 8th Dist. Cuyahoga No. 89651, 2008-Ohio-4866 to speak to this factor, but in *Robinson* the court denied the defendant's presentence motion to withdraw his guilty plea without holding a hearing at all.

{¶26} In the case sub judice, although the trial court did not explicitly refer to the hearing as hearing on the motion to withdraw appellant's plea, the court did, in fact, reference appellant's motion and provide the parties with an opportunity to address the motion. Although counsel sought additional time to develop evidence, the bold and unsupported assertions lack sufficient evidentiary support. *Hall* at *1; *Davis* at ¶ 10; *Wolfson* at ¶ 16, *Smith* at *5; *Wright* at *6.

{¶27} Accordingly, because appellant failed to make a prima facie showing of merit, we conclude that the third factor weighs in favor of appellee.

4.

{¶28} The fourth factor examines whether the trial court fully and fairly considered the motion to withdraw a guilty plea. As we indicate above, the record in the case at bar reveals that the trial court gave full and fair consideration to appellant's motion. Therefore, we believe that the fourth factor weighs in favor of appellee.

5.

{¶29} The fifth factor asks whether a defendant requested to withdraw the plea within a reasonable time. Here, less than two months elapsed between appellant's guilty plea and his request to withdraw his plea. Moreover, appellant filed his motion to withdraw his plea five days before his scheduled sentencing hearing. Based on the foregoing, we believe that appellant filed his motion within a reasonable time. Thus, the fifth factor weighs in appellant's favor.

6.

{¶30} The sixth factor asks whether a defendant sufficiently outlined specific reasons for the plea withdrawal. Here,

appellant's motion, filed five days prior to sentencing, argued that he pleaded guilty to the indictment on the advice of counsel because, if he did not do so, the trial court would impose the maximum prison sentence. Appellant also (1) maintained his innocence, (2) claimed he had no alcohol in his system, (3) was not under the influence of any drug of abuse, and (4) "his plea was due, in part, to some intellectual dysfunction as well as advise of counsel." When the court addressed appellant's motion to withdraw the plea, counsel reiterated those same reasons. We believe that, although appellant cites reasons to seek the withdrawal of his plea, his claims lacked sufficient evidentiary support. Once again, bold assertions that lack sufficient evidentiary support will not adequately support a motion to withdraw a plea. Moreover, some of appellant's statements appear to be internally inconsistent. Thus, we believe that this factor weighs in favor of appellee.

7.

{¶31} The seventh factor asks whether a defendant understood the nature of the charges and possible penalties. Here, the trial court conducted a very thorough Crim.R. 11 plea hearing. The court asked appellant whether he understood that he would be entering a guilty plea and the ramifications of the plea.

Appellant stated that he understood the ramifications of his plea. The trial court also advised appellant of the maximum possible sentence. This factor, we believe, weighs heavily in favor of appellee.

8.

{¶32} Under the eighth factor, we must examine whether a defendant had possible defenses to the charges. "In weighing [this] factor, 'the trial judge must determine whether the claim of innocence is anything more than the defendant's change of heart about the plea agreement.' " *State v. Davis*, 5th Dist. Richland No. 15CA6, 2015-Ohio-5196, ¶ 19, quoting *State v. Davison*, 5th Dist. Stark No. 2008-CA-00082, 2008-Ohio-7037, ¶ 45.

{¶33} As indicated above, a mere change of heart is not a reasonable basis for a defendant to withdraw his guilty plea. *Sarver* at ¶ 44; *State v. Lambros*, 44 Ohio App.3d 102, 103, 541 N.E.2d 632 (8th Dist.1988). In the case at bar, appellant argues his actual innocence and contends that he will have evidence to dispute the charge. However, in this inquiry "the balancing test only asks whether the defendant has *possible* defenses. Whether appellant will be successful in those defenses is for a jury to decide." *State v. Jones*, 10th Dist. Franklin No. 15AP-530, 2016-Ohio-951, ¶ 10. However, once again

a mere assertion that such evidence exists, but lacks sufficient evidentiary support, does not satisfy a defendant's burden. Thus, we believe that this factor weighs in favor of appellee.

9.

{¶34} Under the ninth and final factor, we must examine whether the withdrawal of appellant's plea would prejudice appellee. Although the state opposed the motion at sentencing, the state did not argue that it would suffer prejudice "beyond the ordinary impact of any defendant's subsequent withdrawal of a guilty plea." *State v. Harris,* 10th Dist. Franklin No. 09AP-1111, 2010-Ohio-4127, ¶ 26. *State v. Boyd*, 10th Dist. Franklin No. 97APA12-1640, 1998 WL 733717 (Oct. 22, 1998) (noting that prejudice usually involves a scenario where a state's witness has become unavailable); accord *State v. Cuthbertson*, 139 Ohio App.3d 895, 746 N.E.2d 197 (7th Dist. Sept. 21, 2000).

> When a defendant claims he is innocent and wishes to withdraw his plea of guilt prior to sentencing, a comparison of the interests and potential prejudice to the respective parties weighs heavily in the interests of the accused. That is, in such a situation we have the inconvenience to the state of proving the guilt of a defendant at trial versus the possibility that a person has pled guilty to a crime they did not commit. Absent any showing of some other real prejudice to the state which occurred solely as a result of entering into a plea bargain, as here, the potential harm to the state in vacating the plea is slight, whereas the potential harm to the defendant in refusing to vacate the plea is great.

Cuthbertson, at 899-900.

{¶35} Therefore, in view of the minimal passage of time between appellant's arrest, his guilty plea and sentencing, we believe that the final factor weighs in favor of appellant.

Conclusion

{¶36} In the case sub judice, we believe that the trial court accurately observed that this case appeared to be a "change of heart case." The court also cited *State v. Sarver*, 4th Dist. Washington No. 17CA27, 17CA28, 17CA29, 2018-Ohio-2796, wherein this court concluded that the defendant had a change of heart concerning his guilty plea, and that a change of heart, after becoming aware of an imminent, harsh sentence, does not entitle a defendant to withdraw his guilty plea. *Sarver,* ¶ 44, citing *State v. Mogle,* 2d Dist. Darke No. 2013-CA-4, 2013-CA-5, 2013-Ohio-5342, ¶ 25, quoting *State v. McComb,* 2d Dist. Montgomery No. 22570, 22571, 2008-Ohio-295, ¶ 9. After our review of the various factors that courts use to evaluate whether a motion to withdraw a plea should be granted, we believe that only two factors weigh in appellant's favor. Consequently, after we consider the above factors, we believe that the trial court acted reasonably and its denial of appellant's motion to withdraw his guilty plea did not constitute an abuse of its discretion.

{¶37} Accordingly, based upon the foregoing reasons, we overrule appellant's assignments of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed. Appellee shall recover of appellant the costs herein taxed.

The Court finds reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Pickaway County Common Pleas Court to carry this judgment into execution.

If a stay of execution of sentence and release upon bail has been previously granted by the trial court or this court, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of the proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60 day period, or the failure of the appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Hess, J. & Wilkin, J.: Concur in Judgment & Opinion

For the Court

BY:_____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.