

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

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	Case No. 24CA4094
	:	
v.	:	
	:	
Jehwaun Booker,	:	<u>DECISION AND</u>
	:	<u>JUDGMENT ENTRY</u>
	:	
Defendant-Appellant.	:	

APPEARANCES:

Jehwaun Booker, Chillicothe, Ohio, appellant, pro se.

Shane A. Tieman, Scioto County Prosecuting Attorney, and Jay Willis, Assistant Scioto County Prosecuting Attorney, Portsmouth, Ohio, for appellee.

Smith, P.J.

{¶1} Appellant, Jehwaun Booker, appeals the judgment of the Scioto County Court of Common Pleas denying his post-sentence motion to withdraw his guilty plea. On appeal, appellant contends that 1) the trial court erred in denying his motion without holding a hearing; and 2) the trial court failed to properly evaluate his affidavit attached in support of his motion, and failed to explain its reasoning for discounting the credibility of his affidavit. However, because the arguments raised on appeal are barred by the doctrine of res judicata, we overrule both assignments of error. Accordingly, the judgment of the trial court is affirmed.

FACTS

{¶2} On December 28, 2022, appellant was the subject of a 71-count indictment alleging the commission of various drug offenses and other related offenses. On May 30, 2023, pursuant to a plea agreement, appellant pled guilty to six counts of the indictment including the crimes of engaging in a pattern of corrupt activity, aggravated trafficking in drugs, and trafficking in a fentanyl-related compound, all felonies of the first and second degrees. The trial court imposed a “jointly recommended and agreed sentence” that consisted of an “aggregate sentence of a minimum prison term of 18 years, with 14 years being mandatory, for an indefinite maximum prison term of up to 23 years and 6 months.” Appellant did not file a direct appeal after he was sentenced on June 9, 2023.

{¶3} On June 10, 2024, appellant filed a pro-se motion to withdraw his guilty pleas pursuant to Crim.R. 32.1, claiming that his motion was being made to correct a manifest injustice. More specifically, the motion alleged that appellant had “suffered ineffective assistance of trial counsel during the pre-trial investigative and advisory stages of the criminal process which led to [his] ill-advised plea of guilty being entered.” Appellant attached his own affidavit in support of his motion.

{¶4} The affidavit stated that he was represented by paid counsel, but that his counsel failed to conduct any relevant pre-trial investigation and failed to file any relevant pre-trial motions. The affidavit further stated that counsel coerced him into “taking an ill-advised plea deal which was contrary to the evidence.” Appellant’s affidavit provided examples of the alleged ineffective assistance of counsel, claiming that counsel failed to interview “known witnesses” who could have testified that he “never sold drugs to anyone,” and also failed to request an independent drug analysis or touch DNA testing on the packages found in the car in which appellant was travelling. Appellant’s affidavit further averred that his counsel coerced him into pleading guilty by informing him of “an alleged plea deal which would have allowed the defendant’s baby’s mother to Ms. Jazmyne Anderson to go free.”

{¶5} The State opposed the motion, claiming that appellant had failed to establish that a manifest injustice had occurred. The State further requested that the trial court deny appellant’s motion without a hearing. The trial court issued a judgment entry denying appellant’s motion on August 1, 2024. In denying the motion, the trial court found that appellant had failed to show how the allegations against his counsel led him to admit guilt. The trial court further found that appellant failed to demonstrate that his “plea and sentence was a clear and openly unjust act,” or that a manifest injustice had occurred. The motion was denied

without holding a hearing. Appellant filed his timely appeal from that judgment entry, setting forth two assignments of error for our review.

ASSIGNMENTS OF ERROR

- I. APPELLANT CONTENDS THAT THE TRIAL COURT DENIED HIM SUBSTANTIVE DUE PROCESS AND EQUAL PROTECTION OF LAW UNDER THE 5TH, 6TH, AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION WHERE THE TRIAL COURT DENIED APPELLANT'S MOTION TO WITHDRAW HIS GUILTY PLEA WITHOUT HOLDING A HEARING.
- II. APPELLANT CONTENDS THAT THE TRIAL COURT DENIED HIM SUBSTANTIVE DUE PROCESS AND EQUAL PROTECTION OF THE LAW AS MANDATED BY THE OHIO SUPREME COURT IN CALHOUN WHERE THE TRIAL COURT FAILED TO (1) PROPERLY EVALUATE APPELLANT'S AFFIDAVIT IN SUPPORT OF HIS MOTION TO WITHDRAW HIS GUILTY PLEA, AND (2) FAILED TO GIVE ITS EXPLANATION FOR DISCOUNTING THE CREDIBILITY OF SUCH AFFIDAVIT IN SUPPORT AND FAILED TO RULE ON THE CLAIM.

ASSIGNMENTS OF ERROR I AND II

{¶6} In his first assignment of error, appellant contends that he was denied due process and equal protection of the law when the trial court denied his post-sentence motion to withdraw his guilty plea without holding a hearing. In his second assignment of error, he contends that the trial court denied him due process and equal protection of the law in failing to find his affidavit in support of his motion credible and further failed to explain its reasoning for discounting the

credibility of the affidavit. Because the arguments raised under both of these assignments of error allege the trial court erred in denying his motion to withdraw his guilty pleas, we address these assignments of error in conjunction with one another.

Standard of Review and Legal Principles

{¶7} Crim.R. 32.1 governs the withdrawal of guilty pleas and provides as follows:

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.

“A defendant who seeks to withdraw a plea of guilty after the imposition of sentence has the burden of establishing the existence of manifest injustice.” *State v. Smith*, 49 Ohio St.2d 261, (1977), paragraph one of the syllabus; *State v. Ogle*, 2014-Ohio-2251, ¶ 8 (4th Dist.).

{¶8} A manifest injustice is a clear and openly unjust act; it relates to a fundamental flaw in the proceedings resulting in a miscarriage of justice or a deprivation of due process. *See State ex rel. Schneider v. Kreiner*, 83 Ohio St.3d 203, 208 (1998); *Ogle, supra*, at ¶ 8; *State v. Hall*, 2003-Ohio-6939, ¶ 12 (10th Dist.). “This is an ‘extremely high standard’ that permits a defendant to withdraw his plea ‘only in extraordinary cases.’ ” *State v. Walton*, 2014-Ohio-618, ¶ 10 (4th Dist.), quoting *State v. Darget*, 2013-Ohio-603, ¶ 21 (4th Dist.).

{¶9} The decision to grant or deny a Crim.R. 32.1 post-sentence motion to withdraw a guilty plea is committed to the sound discretion of the trial court; appellate review of the denial of the motion is thus limited to a determination of whether the trial court abused its discretion. *Walton* at ¶ 11; *see also Smith* at paragraph two of the syllabus (“A motion made pursuant to Crim.R. 32.1 is addressed to the sound discretion of the trial court, and the good faith, credibility and weight of the movant's assertions in support of the motion are matters to be resolved by that court.”). “A trial court abuses its discretion when it makes a decision that is unreasonable, unconscionable, or arbitrary.” *State v. Darmond*, 2013-Ohio-966, ¶ 34.

{¶10} “[A] hearing on a post-sentence motion to withdraw a guilty plea is not necessary if the facts alleged by the defendant, even if accepted as true, would not require the court to grant the motion to withdraw the guilty plea.” *State v. Layne*, 2012-Ohio-1627, ¶ 5 (4th Dist.). Moreover, an evidentiary hearing is not required for deciding post-sentence motions to withdraw a guilty plea where the record conclusively and irrefutably contradicts the allegations in the post-sentence motion to withdraw. *See State v. Pasturzak*, 2009-Ohio-4222, ¶ 18 (4th Dist.); *State v. Iaforaro*, 2002-Ohio-5550, ¶ 12 (9th Dist.); *see also State v. McCann*, 2013-Ohio-2992, ¶ 19 (4th Dist.), quoting *State v. Pemberton*, 2011-Ohio-373, ¶ 26 (4th Dist.) (“[A] trial court must only hold a hearing on a Crim.R. 32.1 motion

if the ‘facts, as alleged by the defendant, indicate a manifest injustice would occur if the plea was allowed to stand.’ ”).

{¶11} Importantly, “[t]he doctrine of res judicata bars a criminal defendant from raising any claim in a Crim.R. 32.1 motion to withdraw guilty plea that could have been raised, but was not, in a first appeal of right.” *State v. Fite*, 2016-Ohio-284, ¶ 8 (4th Dist.), citing *State v. Nooks*, 2014-Ohio-4828, ¶ 12 (10th Dist.); see also *State v. Owens*, 2015-Ohio-1509, ¶ 15 (4th Dist.). Furthermore, this Court has held that “[w]hen the doctrine of res judicata bars claims from being raised in a Crim.R. 32.1 motion, a trial court is not generally required to hold a hearing on that motion.” *State v. Fite, supra*, at ¶ 18, citing *Owens, supra*, at ¶ 15; see also *State v. Vincent*, 2003-Ohio-3998, ¶ 12 (4th Dist.).

Legal Analysis

{¶12} Appellant claims that he received ineffective assistance of counsel by virtue of his trial counsel’s failure to interview “known witnesses” and failure to request independent drug analysis and DNA testing. He also claims his trial counsel coerced him into entering into a plea agreement. However, it is clear that the claims set forth in both his underlying motion and affidavit were previously known to him, and he makes no argument otherwise. Thus, these claims could have, and should have, been raised on direct appeal. Now, one year later, appellant argues that he should be permitted to withdraw his guilty pleas.

{¶13} Appellant cannot now raise these arguments in a Crim.R. 32.1 post-sentence motion to withdraw his guilty plea. The doctrine of res judicata bars such action. *See State v. Owens, supra*, at ¶ 15 (“As this Court has consistently ruled, the doctrine of res judicata bars the raising of any issue in a post-sentence Crim.R. 32.1 motion to withdraw guilty plea that was raised, or could have been raised, in a first appeal of right”), quoting *State v. Harper*, 2014-Ohio-5849, ¶ 11 (4th Dist.), citing *State v. Ables*, 2012-Ohio-3377, ¶ 14 (4th Dist.), in turn citing *State v. LaPlante*, 2011-Ohio-6675, ¶ 8 (4th Dist.). We reach this decision despite the fact that the trial court denied appellant’s motion on the merits rather than applying this doctrine to bar appellant’s claims.¹

{¶14} Moreover, even if appellant’s claims were not barred by the doctrine of res judicata, we agree with the trial court’s determination that appellant failed to demonstrate how his counsel’s failure to request DNA testing and failure to interview witnesses caused him to accept a plea agreement, or how entering into such a plea agreement prejudiced him or resulted in a manifest injustice. Notably, the plea agreement consisted of the State’s agreement to dismiss 65 counts of a 71-

¹*See Goodman v. Goodman*, 2021-Ohio-3169, ¶ 14 (4th Dist.), citing *State v. McCreery*, 2017-Ohio-988, ¶ 12, (4th Dist.) (“When a trial court has stated an erroneous basis for its judgment, an appellate court must affirm the judgment if it is legally correct on other grounds, that is, it achieves the right result for the wrong reason, because such an error is not prejudicial”), in turn citing *State v. Sebastian*, 2009-Ohio-3117, ¶ 25 (4th Dist.). Thus, despite the fact that the trial court denied appellant’s motion on its merits rather than determining the motion to be barred by the doctrine of res judicata, because the trial court reached the correct result, albeit for the wrong reason, the correct action is to affirm the judgment of the trial court. *See State v. Owens, supra* (applying the doctrine of res judicata to bar the appellant’s Crim.R. 32.1 motion to withdraw his guilty plea which alleged ineffective assistance of counsel at trial, and affirming the trial court’s judgment that denied the motion on the merits).

count indictment, along with a promise by the State to recommend a jointly agreed upon sentence, in exchange for appellant pleading guilty to 6 counts of the indictment.

{¶15} Additionally, with respect to appellant's claims that he felt coerced by counsel to enter guilty pleas, appellant has provided no evidence to support this allegation and has further failed to provide this Court with a transcript from the change of plea hearing. In the absence of the transcript, we must presume the regularity of the record below which, in effect, results in a presumption that the trial court properly engaged appellant in the required Crim.R. 11 plea colloquy. That colloquy necessarily would have required the trial court to confirm that appellant was satisfied with the services provided by his attorney, that he was voluntarily entering his pleas, and that he was not being coerced in any manner. Thus, our presumption of regularity leads to a determination that appellant's claims of coercion are contradicted by the record.

{¶16} For the foregoing reasons, we overrule appellant's assignments of error and affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed to appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Scioto 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 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 the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Abele, J. and Hess, J. concur in Judgment and Opinion.

For the Court,

Jason P. Smith
Presiding 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.