

Released 08/17/26

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

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	Case No. 24CA17 and 25CA4
	:	
v.	:	
	:	
DAMIAN M. WISE,	:	<u>DECISION AND JUDGMENT</u>
	:	<u>ENTRY</u>
	:	
Defendant-Appellant.	:	

APPEARANCES:

K. Robert Toy and Andrew E. Grillo, Toy Law Office, Athens, Ohio, for appellant.

Isaac Beller, Gallia County Assistant Prosecuting Attorney, Gallipolis, Ohio, for appellee.

Smith, P.J.

{¶1} Damian M. Wise, “appellant,” appeals the November 22, 2024 and February 3, 2025 entries of the Jackson County Court of Common Pleas. Appellant entered a plea to one count of rape and was sentenced to a minimum and indefinite sentence of 10 to 15 years in prison. After being sentenced, appellant filed a motion to withdraw his guilty plea. On appeal, appellant challenges the trial court’s decision denying his motion to withdraw plea and also challenges the effectiveness of his trial counsel.

Based upon our review, however, appellant's contentions are without merit. Accordingly, both assignments of error are overruled. The judgment of the trial court is affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

{¶2} On June 17, 2024, appellant was indicted on one count of rape, R.C. 2907.02(A)(1)(b) and R.C. 2907.02(B), a felony of the first degree. The single count arose from an incident which occurred on or about February 18, 2024, involving an alleged 12-year old victim, R.P. According to appellant's "Statement of Facts," R.P. stayed overnight at the home of Morgan Johnson, appellant's girlfriend at the time. R.P. alleged that she fell asleep on Johnson's bed and woke up to find appellant "on top of her with his penis inside her."

{¶3} Appellant was arraigned on August 22, 2024, and attended with appointed counsel, Attorney DelliGatti of the Ohio Public Defender's Office. At arraignment, the prosecutor alluded to a DNA report from the Ohio Bureau of Investigations (BCI) indicating that DNA swabbing from the inside panel of R.P.'s underwear was consistent with appellant's DNA. Appellant entered a not guilty plea and was assigned a cash bond. The trial court noted that the matter would need to be tried within 90 days.

{¶4} On August 27, 2024, Attorney Reno, also of the Ohio Public Defender's Office, filed a Discovery Demand on behalf of appellant. The next day, appellant's family provided for his cash bond and he was released. On August 29, 2024, the trial court provided a notice to all parties that a two-day jury trial was scheduled for November 18-19, 2024.

{¶5} The State of Ohio responded to the discovery demand on September 5, 2024. On September 10, 2024, the State filed Supplemental Discovery, which indicated an FBI interview with appellant at the jail. The record also indicates there is a forensic interview with R.P.

{¶6} On October 17, 2024, the matter came on for a pretrial. The State made a plea offer which appellant declined. The details of the offer are set forth in the transcript as follows: "[C]urrently, the punishment would include a life tail if there would be a settlement we would remove it and it would end up being a 10 to 15 with the Reagan Tokes." Attorney Reno stated: "Your Honor, and the Defendant would like to ask for just some additional time to meet with me and go over the details of this matter, including his discovery as well as the details of the offer." The trial court granted the request for additional time and set the matter for a status and/or plea hearing on November 6, 2024.

{¶7} On November 6, 2024, the court reconvened for a final pretrial. Attorney Reno reminded the court that the State's offer was to recommend a ten-year prison term without a life sentence. Attorney Reno further advised the appellant still declined the offer. Appellant reiterated the refusal and the following colloquy ensued:

Judge: As I understand it, from pretrial discussions, the State will be presenting DNA evidence.

PA: We will.

Judge: And that is...DNA of Mr. Wise found in the victim's underwear?

PA: Yes.

Judge: Mr. Wise, you're sure you want to go to trial?

Defendant: Yes.

Judge: You understand that if you're found guilty at trial, it's a ten year to life sentence? Now, I'm... saying this because I have no idea if you'll be found, you know, guilty. I don't...have a crystal ball. But making your decision, I want you to understand all the possible ramifications and a ten year to life sentence is a ...well that's a tough ramification...

Reno: He's...Mr. Wise is shaking his head. We have went over...the benefits and risks and the gamble of going to trial, and at this time, he wishes to go to trial...

Judge: I have such a crowded docket that if the first case doesn't resolve I got to try the second one...I won't do last minute plea bargains. Now, you have the right to come in the day of trial and plead to the indictment as is but

that's no amendment so if there's going to be some type of negotiated plea in this, wow, what we're 12 days from trial?...Okay, if there's a change of heart, it has to be pretty soon. Alright, everyone's ready to proceed to trial?

PA: Absolutely.

Reno: Yes, Your Honor.

{¶8} On November 18, 2024, the morning of appellant's jury trial, the hearing transcript reflects the following:

Judge: We're here in the case of State of Ohio vs. Damian Wise. This was supposed to be a jury trial today. I had over 40 people show up and you weren't here.

Defendant: I'm sorry, Your Honor, I had car problems.

Judge: Got some proof of that?

Defendant: Uh...my grandfather's is back here. He...was driving.

Judge: So, the one day you got to be here on time and you're not so I've got to send all those people home.

Defendant: I'm sorry.

Judge: All those people get inconvenienced because you can't plan on anything correctly. I think this was a dodge. I think this was your hope that this would get moved.

Defendant: No, sir.

Judge: Because this is on the [heels] of a call from your family on Thursday, we're going to hire a new attorney so we get a continuance, right? My staff said, "no, you don't get a continuance. Your new attorney had to be ready to

go today.” This seems like a...this is all very suspicious to me. But we’re going to do your trial this week. We’re going to do it Thursday. And I don’t think the current bond works quite frankly, you failed to appear. So, I am going to revoke the current bond. I’m going to return that money to you...no sir, they want to come...no...no.

Defendant: I tried to call, Your Honor.

Judge: Be here! Be here! The one day you’ve got to get here and you’re not here!

Defendant: And I apologize.

Judge: And I’ve got to send all those people home!

Defendant: I apologize.

Judge: I’ve got witnesses, expert witnesses, everything falls apart because you can’t plan anything!

Defendant: I apologize, Your Honor.

Judge: What good does that do me? What good...tell me what good? Do I suddenly get jurors back? Witnesses suddenly can do this?

Defendant: No, sir.

Judge: We had people who were here since almost 8:00 this morning! Counsel, you talk with his relative back there and if he wants to...you find out before he says it.

Reno: Uh...if I may, Your Honor? Uh...the defendant as well as his family, his family had called in, uh, shortly after I had arrived to the court this morning as well to alert the court that they were having car troubles. Uh...they did what they could and got things together to get here as soon as possible, but there was tire issues that caused delay in their travel from Middleport.

- Judge: How will this be any different on Thursday? It seems like there's a bunch of unreliable vehicles, so how will this be any different on Thursday?
- Reno: They will plan accordingly.
- Judge: Okay, sir, you seem to be the transportation so how are you going to get him here on Thursday?
- Answer: Because...we had other cars. But the one I was driving, I drive it all the time, 10/15 miles a day, I know this might not mean a lot, being on...uh...I used to do it on a paper route after I retired and it's the one I carry animal food and stuff in and it's been reliable and that's the one I started...I got about four or five miles from the house and that's when I had the trouble.
- Judge: What was the trouble?
- Answer: I had a tire blew out and then I had a spare but I was worried about getting it off because they're hard to get off of an older car and so I got...got ahold of my wife and they brought the other car to us. And I called probably 10/15/20 minutes, I can't remember, I can't tell you the truth exactly, even after that happened that I got the wrong judge or the...I got the...
- Judge: Wrong court.
- Answer: Yeah, wrong court. And the lady there talked to me and she gave me the right number and, and that's the paper I had but had that court number on it and it said something about hitting...dial 3 or something and then I got it and then I got the wrong person so then I had my wife look the number up because I was...wasn't thinking because I was in a hurry and she ended up calling...calling and got the right number and called the lady.
- Judge: I still don't have a lot of confidence.

Answer: And we got a better car which is what I got now.

Judge: I don't have a lot of confidence that Mr. Wise is going to show up. I just don't. You're not working, right, Mr. Wise?

Defendant: No, sir.

Judge: So, your one job is really this and you can't do this. I mean, I'm sure, you know, being late...I'm sure you've been late most of your life for pretty much everything, this is the one thing you can't be late for and, you know, your 45 minutes late. And then, you know, when you walk in late, if I kept the jurors, they all see you come in, they know the reason they have been sitting there is because of you. I don't think that's going to make them feel very good about you. It's the other reason I called off the jury. It completely disadvantages the defendant because now jurors are annoyed that some of them have been sitting there almost 2 hours. Why? Because of you. Because you can't get your act together! The parties have indicated that they want to have some discussions among themselves about possible resolution. Um...I said this before, I'll say it again, it's been represented to me besides the victim's testimony that the...there will be an analyst from the State crime lab who will be saying that Mr. Wise's DNA...uh...is in this victim...alleged victim's panties. And let me just be blunt by DNA they're going to say his sperm.

PA: I...will say that the way it looks is they will not say a hundred percent sperm. They will say that it tested presumptively for sperm.

Judge: And then they test it and it's his DNA?

PA: Yes.

Judge: I don't predict what juries do... Uh...that seems to me to be powerful evidence in this case and I will repeat again

to you, if convicted, your sentence is ten to life. You will be looking at a life sentence. Now, the State had made an offer before you had turned it down. Um...I'm going to let the parties have some discussions to see if you want to reconsider that position. Uh...how much time do the parties want?

Reno: I...will need some time to discuss the entire case again with Mr. Wise and then I will report back.

Judge: Okay. Then why don't you use the law library. And then when you're ready, you just let us know.

Reno: Yes, Your Honor.

Judge: Oh, and I will go back on the record to know where we're at so Mr. Wise, you don't leave this building until I excuse you. If you do leave, that's escape.

Defendant: Okay.

Judge: That's a new felony. I guarantee you, you will be charged with it. Absolutely.

Defendant: Yes, sir.

Judge: At that point, that would also constitute you fleeing bond, I will make a bond that will be extremely high.

Defendant: Okay.

Judge: You are in enough difficulty. Don't make it any worse. Alright, we're adjourned.

{¶9} The November 18, 2024 transcript further demonstrates the following:

Judge: Alright, we're back on the record in the Wise case, case number 24CR0082...It is my understanding that

this...we're going to do a plea. There's going to be an amendment to... of Count One, it will be rape under 2907.02 the (A)(2) section, a felony of the first degree. There would be a 10 to 15-year prison...uh definite prison term. There would be a Tier III sex offender registration and then there would be a mandatory 5 years of post-release control in this case. Have I said that correctly?

PA: Yes.

Reno: Yes, Your Honor.

Judge: From the defense point of view, have I said that correctly?

Reno: Yes, Your Honor.

Judge: Law enforcement in agreement with this resolution?

PA: Yes.

Judge: I understand the victim is present with her mother?

PA: Yes.

Judge: Are they in agreement with this resolution?

PA: Victim did not...end up making it, sent her mother as representative...and they are, yes.

Judge: Alright, Mr. Wise, please raise your right hand. Do you swear to tell the whole truth and nothing but the truth in this matter, so help you God?

Defendant: Yes, sir.

Judge: ...I've got to ask you a series of questions this morning. I'm not trying to insult you with any of these questions, but I need to ask these to make sure that you're entering

this plea in a knowing, voluntary, and intelligent fashion. If I ask you a question that you don't understand, you let me know and I will give you an opportunity to speak to your attorney. Alright?

Defendant: Okay.

{¶10} The trial court's inquiry continued as follows:

Q: State your name for the record.

A: Damian Michael Wise.

Q: How old are you?

A: Thirty-three (33).

Q: How far have you gone in school?

A: I graduated from high school, and I went through a little bit of college.

Q: So, it's fair to say that you can read and write English?

A: Yes, sir.

Q: You're a U.S. citizen?

A: Yes, sir.

Q: Are you under the influence of any drugs, medications, or alcohol today?

A: No, sir.

Q: Has anyone threatened you to enter this plea of guilty?

A: No, sir.

Q: Anyone promise you anything special to enter this plea other

than what we have said here today on the record?

A: No, sir.

Q: You understand that you and the State have made a recommendation to this court for sentencing?

A: Um...what...

Reno: ...that would mean we made a recommendation for sentence.

A: Okay. Yeah, yes sir.

Q: Okay. Now, you understand that the court is not bound to accept that recommendation?

A: Yes, sir.

Q: Knowing that, you want to proceed with your plea?

A: Yes, sir.

Q: Have you read the plea agreement?

A: Yes, sir.

Q: Do you understand what it says?

A: Yes, sir.

Q: Do you have any questions about it?

A: No, sir.

Q: Have you had enough time to speak with your attorney before proceedings?

A: Yes, sir.

Q: She's talked to you about the case and answered all your questions?

A: Yes, sir.

Q: You've reviewed the discovery, indictment, and other legal documents in this case with her?

A: Yes, sir.

Q: You understand that pleading guilty you will not be having a trial in this case?

A: Yes, sir.

Q: You understand what you are pleading guilty to in Count 1?

A: Yes, sir.

Q: Do you have any questions about Count 1?

A: No, sir.

Q: You understand that if you plead guilty to Count 1, you're making a complete admission that you've committed this crime?

A: Yes, sir.

Q: Alright, do we have a statement of facts concerning Count 1?

PA: We do. On 2/18 of 2024, Mr. Wise had sexual conduct with the child victim and that when doing so he purposely compelled her with force or threat of force.

Q: Alright, for the defense, Attorney Reno, is that a correct statement?

Reno: Yes, Your Honor.

Q: Mr. Wise, you've heard that statement of facts?

A: Say again, I'm sorry, sir.

Q: You've heard that statement of facts?

A: Yes, sir.

Q: Is that true?

A: Yes, sir.

Q: Okay. Count 1 is a felony of the first degree, and you're pleading to an offense that carries both a maximum and minimum term. Do you understand that?

A: Ten to 15. Sir?

Q: Well...that's the recommended sentence.

A: Yes.

Q: You understand the court would select a minimum sentence anywhere between three to eleven years?

A: Okay.

{¶11} The trial court continued with required notifications including post-release control. Next, the court discussed appellant's constitutional rights as follows:

Q: You understand that you have the right to a trial by a jury of 12 persons?

A: Yes, sir.

Q: You understand that at a trial, the State of Ohio has the obligation to prove your guilt beyond a reasonable doubt as to

each element of each crime at which you are charged?

A: Yes, sir.

Q: You understand your attorney has the right to cross-examine any witnesses who testify against you at trial?

A: Yes, sir.

Q: You understand that you have the right to subpoena your own witnesses to attend trial?

A: Yes, sir.

Q: You understand you cannot be forced to testify against yourself at trial?

A: Yes, sir.

Q: And you understand that if you plead guilty, you are giving up all these important constitutional rights?

A: Yes, sir.

{¶12} After explaining appellant's appeal rights, and his right to court-appointed counsel on appeal, the trial court proceeded to ask the following questions before appellant actually entered his plea:

Q: Do you have any questions before we proceed?

A: No, sir.

Q: Do you need to speak with your attorney anymore?

A: Mm, no, sir, I don't think so.

Q: Okay. Any questions that you would have for her?

A: Mm, no. No, sir, not off the top of my head.

Q: Alright. You've had enough time to think about this?

A: Yes, sir.

Q: You're certain you want to enter a plea as we have discussed here on the record?

A: Yes, sir.

At this point, the trial court explained the Tier III sex offender registration requirements.

{¶13} Appellant thereafter entered his guilty plea. The trial court inquired as to whether appellant wished to proceed with sentencing or did he wish a separate date. Attorney Reno requested that appellant's bond not be revoked and that he be allowed a few days to manage his affairs and say goodbye to his family. Counsel pointed out that appellant had shown up for every other court date. The State opposed the request. Based on the underlying facts of the crime, the trial court denied appellant's request. Sentencing was scheduled for November 21, 2024.

{¶14} Appellant interjected: "Can I say something, Your Honor? . . . My grandma is . . . at that age whenever I go to prison I probably won't get to see her no more. I . . . please just give me one day just to see here, please? The Judge replied: "You should have thought about that before you raped a 12-year old . . . I think you're a risk to society . . ."

{¶15} On the day of sentencing, the trial court gave appellant the opportunity to speak, which appellant declined. The trial court sentenced appellant, as jointly recommended, to a 10 to 15-year sentence, pursuant to Reagan Tokes requirements for indefinite sentencing. The court also imposed the requirement to register as a Tier III sex offender. The record reflects appellant's signed waiver of jury trial; signed entry of guilty plea acknowledging that his constitutional rights had been explained to him by his counsel, that he had reviewed the facts and the law of the case with his counsel, and that he understood the jointly recommended sentence; signed acknowledgment that "no person has threatened me, promised me leniency, or in any other way coerced or induced me to plead 'Guilty' as indicated above;" and signed acknowledgment that "I am completely satisfied with the legal representation and advice I have received from my counsel..."

{¶16} Appellant's Sentencing Entry was filed on November 22, 2024. On December 5, 2024, appellant's current counsel filed a notice of appearance. On December 11, 2024, appellant's counsel filed a Motion to Withdraw Plea.

{¶17} Attached to the motion to withdraw as Exhibit A was a copy of the lab report from BCI. The report indicated a finding of DNA consistent with appellant's DNA, located on the inside panel of R.P.'s underwear. In

the motion to withdraw, appellant indicated that he had slept in his girlfriend's bed, where R.P. alleged the rape took place, many times prior to the alleged incident. He argued that his DNA could have been inadvertently transferred from the bedsheets. He pointed out that the bedsheets had never been submitted to BCI for analysis. He also pointed out the delay in reporting a crime and the fact that R.P.'s underwear had initially been thrown away and later retrieved from a trash can.

{¶18} Attached as Exhibit B was appellant's own affidavit.

Appellant's sworn affidavit states in pertinent part:

3. Kelsey Reno, my attorney, did not provide me with discovery in my case until November 14, 2024 at 3:23 p.m.
4. I had a jury trial set/scheduled for November 18, 2024.
5. My attorney did not discuss my discovery with me prior to November 18, 2024. She never went over discovery with me at all.
6. My family contacted the court to ask if I could have a continuance if I found my (cont'd) . . . attorney and the court said no.
7. My attorney and I only spoke at pretrials. I had to find her on November 13, 2024 to ask for my discovery. I initially went to other office at the Public Defender's Office in Chillicothe. She was not present. She was at court in Jackson. I located her after court ab out 4:00 p.m. on November 13, 2024. We spoke for five minutes. I asked for my discovery since trial was in less than one week.
8. On November 14, 2024, I still had not received discovery, I

spoke with her on the phone. She sent my discovery at 3:53 p.m. on Nov. 14, 2024. See email.

9. I received ineffective assistance of counsel.
10. She did not discuss a presentencing investigation with me.
11. The state extended an offer on or about 10/17/24. I was forced to accept or reject it by 11/6/24 without benefit of discovery or discussing with my attorney.
12. I would like to withdraw my plea and sentence and have a jury trial.
13. I believe it is a manifest injustice to not allow me to withdraw my plea post sentence, pursuant to Ohio Crim.R. 32.1.

{¶19} On December 18, 2024, appellant's counsel filed a notice of appeal of the sentencing entry, which was assigned appellate case number 24CA17. On the same date, counsel filed a Motion for Limited Remand for Trial Court to Act on Crim.R. 32.1 Motion. This court granted the motion for limited remand on February 3, 2025. On February 11, 2025, the trial court entered its Decision and Order on Motion to Withdraw Plea. The trial court denied appellant's motion to withdraw his plea without a hearing. On February 21, 2025, appellant's counsel filed notice to this court to proceed on the merits of the appeal. Appellant's counsel also filed a notice of appeal of the trial court decision denying the motion to withdraw plea. This appeal was assigned case number 25CA4.

{¶20} On March 3, 2025, this court consolidated the cases.

Additional facts are set forth below.

ASSIGNMENTS OF ERROR

- I. THE TRIAL COURT ERRED BY ACCEPTING DEFENDANT'S NOVEMBER 18, 2024 GUILTY PLEA AS KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY [SIC] AND THEN DENYING DEFENDANT'S MOTION TO WITHDRAW PLEA FOR MANIFEST INJUSTICE WITHOUT A HEARING.
- II. DEFENDANT'S TRIAL COUNSEL PROVIDED HIM WITH CONSTITUTIONALLY INEFFECTIVE ASSISTANCE OF COUNSEL RESULTING IN DEFENDANT BEING COERCED TO CHANGE HIS GUILTY PLEA ON NOVEMBER 18, 2024.

{¶21} Under the first assignment of error, appellant's argument focuses solely upon the court's denial of his motion to withdraw his plea and the court's failure to conduct a hearing on his motion. Therefore, we limit ourselves to analysis of those overarching issues

Assignment of Error One - Motion to Withdraw Plea

Standard of Review

{¶22} 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. Booker, 2025-Ohio-4455 at ¶ 7 (4th Dist.); *State v. Ogle*, 2014-

Ohio-2251, ¶ 8 (4th Dist.). Appellant was sentenced on November 1, 2024.

His motion to withdraw his plea was filed on December 11, 2024. Thus, we will review to see if the trial court’s finding that no manifest injustice occurred was correct.

{¶23} 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; (citation omitted); *Booker*, at ¶ 8.

“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.).

{¶24} 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. *Booker*, at ¶ 9;

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.

{¶25} Further, “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.); *see Booker*, at ¶ 10. 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.’ ”).

Analysis

{¶ 26} Appellant sets forth the correct standard of review for a post-sentence motion to withdraw guilty plea. Appellant also recognizes that it is the movant's burden to demonstrate a manifest injustice. Appellant contends that the trial court erred by denying his post-sentence motion to withdraw his guilty plea for the following reasons:

1. The trial court denied a continuance of the trial date which would have enabled appellant to hire new legal counsel;
2. The trial court did not find his counsel to be ineffective due to her alleged failure to provide discovery to appellant;
3. The trial court abused its expedited docket by setting trial three days later and not asking appellant if he wished to waive time in order to meet with current or new counsel to review discovery;
4. The trial court pressured him to take a plea deal to avoid a life sentence;
5. The trial court was coercive when it revoked his bond and suggested escape charges could be filed on the date the plea was entered.

Did the actions of the trial court and trial counsel, individually or cumulatively, constitute manifest injustice? For the reasons which follow, we disagree.

Continuance

{¶27} In his brief, appellant argues that “he and/or his family” requested a continuance in order for him to obtain new counsel. Appellant argues that the trial court erroneously assumed that the request was a delay tactic. Appellant relates his need for a continuance to the fact that he received discovery only four days prior to trial. The State argues that the trial court viewed appellant’s actions as delay tactics and was well within its discretion to deny the continuance.

{¶28} This court has recently discussed the well-established law regarding the grant or denial of continuances. *See State v. Smith*, 2026-Ohio-1387, at ¶¶ 40- 42. In general, “[t]he grant or denial of a continuance is a matter which is entrusted to the broad, sound discretion of the trial judge. An appellate court must not reverse the denial of a continuance unless there has been an abuse of discretion.” *State v. Unger*, 67 Ohio St.2d 65, 67 (1981) (Citations omitted.) “ ‘[A]buse of discretion’ [means] an ‘unreasonable, arbitrary, or unconscionable use of discretion, or * * * a view or action that no conscientious judge could honestly have taken.’ ” *State v. Kirkland*, 2014-Ohio-1966, ¶ 67, quoting *State v. Brady*, 2008-Ohio-4493, ¶ 23; *State v. Stevers*, 2023-Ohio-3050, at ¶19 (4th Dist.).

{¶29} A trial court that considers a motion to continue should “[w]eigh [] against any potential prejudice to the defendant * * * concerns

such as a court's right to control its own docket and the public's interest in the prompt and efficient dispatch of justice.” *Unger*, 67 Ohio St.2d 65 (1981). Therefore, when evaluating a request for a continuance, a court should also consider, inter alia:

the length of the delay requested; whether other continuances have been requested and received; the inconvenience to litigants, witnesses, opposing counsel and the court; whether the requested delay is for legitimate reasons to whether it is dilatory, purposeful, or contrived; whether the defendant contributed to the circumstance which gives rise to the request for a continuance; and other relevant factors, depending on the unique facts of each case.

Id. at 67-68.

{¶30} While it is a “basic due process right and indeed essential to a fair trial that a defense counsel be afforded the reasonable opportunity to prepare his case,” *State v. Sowders*, 4 Ohio St.3d 143, 144 (1983), not every denial of a continuance violates due process. *Ungar v. Sarafite*, 376 U.S. 575, 589 (1964); *Stevens, supra*, at ¶ 21. This court has held that “nothing requires trial courts to specifically articulate an analysis of each *Unger* factor.” *State v. Dickens*, 2009-Ohio-4541, ¶ 13 (4th Dist.) (Citation omitted.) Further, absent evidence to the contrary, we “must presume that the trial court applied the law [in this case, the *Unger* factors] correctly.” *State v. Coombs*, 18 Ohio St.3d 123, 125 (1985) (Citation omitted.) A denial

of a request for continuance does not necessarily abuse discretion or create a manifest injustice. *See State v. Goffee*, 2005-Ohio-2596, at ¶ 44 (5th Dist.).

{¶31} First, we point out that appellant himself never requested a continuance. Arguably, his family did not request a continuance. Appellant's affidavit attached to his motion to withdraw indicates at Paragraph Six that his family contacted the court to ask for a continuance. However, the trial court's recollection of the family's call was described as "we're going to hire a new attorney, so we get a continuance, right?" The judge further described the court's response to the family's call as, "My staff said, 'no you don't get a continuance.'" Assuming the family made a formal verbal request, we do not find a manifest injustice occurred because the family's request was denied.

{¶32} Pursuant to *Unger*, the court may consider the legitimacy of the reason for the continuance. A request for a continuance to obtain new counsel can be a legitimate reason. However, the trial court construed the earlier alleged request for continuance as a delay tactic. And, the trial court may also consider inconvenience to the jurors, attorneys, and witnesses who were scheduled to attend trial on the week of November 18th. While the record does not reflect what other factors may have come into play, we presume the trial court correctly applied the law.

{¶33} Based on the foregoing, we find no manifest injustice occurred because appellant's November 18 trial date was not continued.

Ineffective Assistance of Counsel

Standard of Review

{¶34} “ ‘ “Generally, a guilty plea waives most appealable errors, except, for example, that a plea was not knowing, intelligent and voluntary.” ’ ” *State v. Reed*, at ¶ 8 (4th Dist.), quoting *State v. Wheeler*, 2016-Ohio-5503, ¶ 5, quoting *State v. Robinson*, 2015-Ohio-2635, ¶ 45 (4th Dist.). Therefore, a guilty plea “waives the right to assert ineffective assistance of counsel unless the counsel's errors affected the knowing and voluntary nature of the plea.” *State v. McMichael*, 2012-Ohio-3166, ¶ 14 (10th Dist.), citing *State v. Hill*, 2011-Ohio-2869, ¶ 15 (10th Dist.), citing *State v. Spates*, 64 Ohio St.3d 269, 272 (1992).

{¶35} “To establish constitutionally ineffective assistance of trial counsel, a criminal defendant must show that (1) his counsel's performance was deficient, and (2) such deficient performance prejudiced his defense and deprived him of a fair trial.” *Wheeler* at ¶ 4, citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984) and *State v. Issa*, 93 Ohio St.3d 49, 67 (2001). “ ‘In order to show deficient performance, the defendant must prove that counsel's performance fell below an objective level of reasonable

representation. To show prejudice, the defendant must show a reasonable probability that, but for counsel's error, the result of the proceeding would have been different.’ ” (emphasis omitted) *Id.*, quoting *State v. Conway*, 2006-Ohio-2815, ¶ 95.

{¶36} “In considering whether an attorney's performance fell below an objective standard of reasonableness, a reviewing court ‘must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.’ ” *State v. Jackson*, 2025-Ohio-369, ¶ 34 (8th Dist.), quoting *Strickland* at 689. In addition to establishing deficient performance, a defendant must show he was prejudiced as a result of counsel's actions. *See State v. Fluhart*, 2021-Ohio-2153, ¶ 34 (12th Dist.), citing *State v. Patrick*, 2016-Ohio-995, ¶ 13 (12th Dist.), citing *Strickland* at 687. In the context of a guilty plea, “prejudice will not be found unless a defendant demonstrates there is a reasonable probability that, if not for counsel's errors, he would not have entered the plea.” *Id.*

Analysis

{¶37} Appellant contends that he was deprived of effective assistance of counsel throughout the entire proceedings, from arraignment to the change of plea hearing. He asserts that the constitutionally ineffective assistance of counsel resulted in his being coerced to change his plea to

guilty on November 18, 2024. Then, the motion to withdraw plea was denied despite his affidavit alleging and describing ineffective assistance of counsel. For the reasons which will follow, we disagree.

Discovery and Communications

{¶38} Appellant's brief sets forth several alleged instances of ineffective assistance. We begin with his argument regarding discovery.

Appellant's brief states:

Attorney #2 did not provide Mr. Wise with copy of this discovery until four days before the Jury Trial...Part of the discovery in possession of Attorney #2 was a Forensic Interview of R.P. and body cam interview of R.P. Attorney #2 did not review this with Mr. Wise prior to trial. In fact, Attorney #2 merely sent Mr. Wise an email on November 14, 2024 with a DNA discovery packet, labs, police reports, and copies of text messages, an inventory, and the search warrant. This email did not include the recorded interview of R.P.

Relative to the discovery issue, appellant argues that his attorney failed to discuss the discovery with him prior to November 6, 2024 and failed to communicate with him seriously to discuss the evidence. Appellant points to his counsel's statement on November 18, 2024 that, "I will need some time to discuss the entire case again with Mr. Wise and then I will report back," as an admission supporting his claims regarding the discovery and the alleged lack of communication.

{¶39} In this case, appellant’s motion to withdraw his plea was supported by his own affidavit. Although the court must accord due deference to a supporting affidavit when deciding a Crim.R. 32.1 motion, the court has discretion to judge the credibility of the affidavit prior to conducting an evidentiary hearing on the motion. *See State v. Gaines*, 2022-Ohio-4278; *State v. West*, 2017-Ohio-5596, ¶ 38 (1st Dist.); (citation omitted.) “In assessing an affidavit's credibility, and thus determining the need for a hearing, the court must consider all relevant factors, including

(1) whether the judge reviewing the motion also presided at the plea hearing, (2) whether multiple affidavits contain nearly identical language or otherwise appear to have been drafted by the same person, (3) whether the affidavit contains or relies on hearsay, (4) whether the affiant is related to the defendant or otherwise interested in the success of his efforts, (5) whether the affidavit contradicts defense evidence, (6) whether the affidavit is contradicted by any other sworn statement of the affiant, and (7) whether the affidavit is internally inconsistent.

(Citation omitted). *West* at ¶ 38; *accord State v. Watters*, 2017-Ohio-5640, at ¶ 15 (adopting for purposes of a Crim.R. 32.1 motion the factors set forth in *State v. Calhoun*, 86 Ohio St.3d 279 (1999) for assessing affidavits submitted in support of a postconviction petition).

{¶40} Here, the trial judge who reviewed appellant's motion to withdraw his plea is the same judge who accepted the guilty plea. In the trial court's decision denying appellant's motion, the trial court found:

Applying the factors set forth in *Gaines*, the Court finds that the Defendant's affidavit to be inadequate and not credible. This Judge conducted the plea hearing and conducted a full and complete discussion with the Defendant under oath. The Defendant is claiming that his plea is defective due to his attorney's ineffective conduct. The Defendant under oath stated to the Court that his counsel had reviewed the discovery materials with him. Defendant now claims that his counsel did not review the discovery material with him. Both of Defendant's assertions have been made under oath and one of the statements is simply not true.

{¶41} We agree with the trial court's analysis. The transcript demonstrates that during the plea colloquy, appellant explicitly affirmed to the trial court that he had reviewed discovery with his attorney. Furthermore, appellant affirmed that he did not need to speak to his attorney anymore; that he had no additional questions; and that he had had enough time to think about the matter. Other than his family's call to the court, there was no indication of dissatisfaction with his attorney. Appellant's affirmations cast doubt on the veracity of his self-serving affidavit.

{¶42} Significantly, we do not interpret counsel's statement that she would need time to "discuss the entire case again" with appellant as an indicator of unpreparedness. Appellant had arrived 45 minutes late for his

own jury trial. We presume his counsel arrived prepared and in trial mode. There is no indication appellant and his attorney had spoken that morning. Appellant was faced with the option to either plead or proceed to a jury trial rescheduled in three days. It is incomprehensible that appellant's counsel would not want to speak with him about his choices. And the fact that counsel wanted to discuss the case with him "again" may reasonably be interpreted as her having discussed the case with him *before*.

{¶43} Appellant's affidavit also states that his attorney did not discuss discovery with him prior to November 18, 2024. A trial attorney's failure to communicate with his or her client may rise to the level of deficient performance, depending on the circumstances. *See State v. Lawson*, 2020-Ohio-6852, at ¶ 106 (2d Dist.). Here, the record reflects that on October 17, 2024, appellant's attorney requested time to meet with appellant and go over details of the plea offer. We do not know if an appointment ever took place and if so, whether it was appellant or his counsel who was dilatory in meeting. Appellant also avers at Paragraph Seven that he spoke to his attorney at pretrials and on November 13 and 14, 2024.

{¶44} The full extent of appellant's communications with his attorney is not reflected in the record. "[A] claim of lack of communication between a defendant and his trial counsel is not one that can be borne out by the

record. It relies upon information necessarily outside the record and is therefore not an issue we can review on direct appeal.” *See Lawson, supra*. (Citations omitted.) *See also State v. Cheatham*, 2025-Ohio-2584, at ¶ 89 (4th Dist.) and *State v. Nichols*, 11 Ohio St.3d 40, 42 (1984). Appellant’s claim regarding lack of communication is more properly raised in a petition for post-conviction relief. While it may have been preferable to have additional discussions, appellant’s assertion that counsel’s performance was inadequate due to a lack of communication is without merit.

{¶45} And even if it is true that counsel did not discuss the discovery with appellant prior to November 18, 2024, appellant told the trial court that she had discussed discovery with him prior to his entering his plea on that date. Appellant also indicated that he was satisfied with counsel’s performance. It was within the province of the trial court to find the credibility of appellant’s affidavit to be lacking. Appellant’s assertion that his counsel’s performance was inadequate due to the discovery issue is also without merit.

Funding for DNA Expert

{¶46} On appeal, appellant summarily argues that his attorney failed to request funds or a subpoena for a DNA expert. In his motion to withdraw, appellant argued that R.P., the victim, was a friend of appellant’s girlfriend.

During the relevant timeframe, R.P. had slept on the same sheets as appellant and his girlfriend had slept on. Appellant pointed out a rape kit was not performed because of a delay in reporting; the victim's underwear had been thrown away and retrieved from trash before being turned over to BCI; by contrast, the bed sheets had not been turned over to BCI; and appellant's girlfriend had not been subpoenaed to testify about the bed sheets. In appellant's motion, he attached a copy of the DNA report and his own affidavit.

{¶47} In the trial court's decision denying appellant's motion, the trial court cited this court's decision in *State v. McDougald*, 2022-Ohio-3191.

There, we observed:

Debatable strategic and tactical decisions may not form the basis of a claim for ineffective assistance of counsel. *State v. Phillips*, 74 Ohio St.3d 72, 85, 1995-Ohio-171, 656 N.E.2d 643; *State v. Hoffner*, 102 Ohio St.3d 358, 365, 811 N.E.2d 48, 2004-Ohio-3430, ¶ 45. Even if the wisdom of an approach is questionable, "debatable trial tactics" do not constitute ineffective assistance of counsel. *Id.* "In *Denno*, defense counsel advised his client to confess, and the court, at pages 373, 374, 811 N.E.2d 48, stated: 'Hindsight, of course, tells us that the advice to confess ill served the defendant * * *,' and that '(p)oor tactics of experienced counsel, however, even with disastrous result, may hardly be considered lack of due process * * *.' " *State v. Clayton*, 62 Ohio St.2d 45, 48, 402 N.E.2d 1189 (1980)(quoting *United States v. Denno*, 313 F.2d 364 (2nd Cir. 1963)), certiorari denied 372 U.S. 978, 83 S.Ct. 1112, 10 L.Ed.2d 143.

McDougald, at ¶ 41. This court also explained:

Trial counsel's failure to request an expert is a “debatable trial tactic,” and does not amount to ineffective assistance of counsel. *See State v. Thompson*, 33 Ohio St.3d 1, 9, 514 N.E.2d 407 (1987)(trial counsel's failure to obtain a forensic pathologist to “rebut” issue of rape was not ineffective assistance of counsel); *State v. Foust*, 105 Ohio St.3d 137, 153-154, 823 N.E.2d 836, 2004-Ohio-7006, ¶ 97-99 (trial counsel's failure to request funds for a DNA expert, an alcohol and substance-abuse expert, a fingerprint expert, and an arson expert did not amount to ineffective assistance of counsel because appellant's need for experts was “highly speculative” and counsel's choice “to rely on cross-examination” of prosecution's expert was a “legitimate tactical decision”); *State v. Yarger*, 6th Dist. Huron No. H-97-014, 1998 WL 230648 (May 1, 1998) (trial counsel's failure to hire an expert medical doctor to rebut state's expert witness was not ineffective assistance of trial counsel); *State v. Rutter*, 4th Dist. Hocking No. 02CA17, 2003-Ohio-373, ¶ 19, 28 (trial counsel's failure to hire an accident reconstructionist did not amount to ineffective assistance of counsel).

Id. at ¶ 42.

{¶48} Here, the trial court implicitly concluded that appellant’s counsel may have been making a strategic decision. It is possible that further testing of the DNA, testing of the bed sheets, and testimony from appellant’s then girlfriend may have only strengthened the case against him, resulting in the State’s failure to offer any plea bargain. Like the trial court, we view counsel’s failure to request funds for DNA testing as a strategic

decision. Based on the foregoing, we cannot find that appellant's counsel rendered ineffective assistance by failing to request funds for a DNA expert.

Pretrial Motions

{¶49} In the appellate brief, appellant asserts only that his counsel “failed to file any pretrial motions.” While arguing above that his counsel should have requested funds for a defense DNA expert and arguing below that his counsel should have requested a continuance, appellant does not suggest what these additional motions should be. We are not required to construct appellant's arguments for him. *See State v. Shamblin*, 2024-Ohio-5315, at ¶ 14 (4th Dist.). As such, we find nothing to support his claim that counsel was inadequate for failing to file additional unidentified pretrial motions.

Continuance

{¶50} Appellant also argues on appeal that his counsel was ineffective by failing to request a continuance at any time during the proceedings, especially, knowing that she had not discussed case with him. Again, the subject of counsel's communications and contact with appellant concern matters outside the record. As above, we decline to address these contentions. Therefore, we do not find counsel rendered ineffective

assistance by failing to request a continuance at any time during the proceedings.

Status Report

{¶51} Appellant also contends his counsel rendered ineffective assistance by failing to file a status report on or before September 27, 2024, as required by the case management order. Again, this issue is not developed herein. Appellant fails to explain how he was prejudiced by his counsel's omission. Accordingly, this allegation of deficient performance is also without merit.

{¶52} Based on the foregoing, we agree with the trial court's finding that appellant's counsel did not render ineffective assistance. As such, appellant did not establish manifest injustice due to alleged ineffective assistance of counsel. The trial court did not abuse its discretion by denying appellant's motion to withdraw his guilty plea on the basis of ineffective assistance of counsel.

Expedited Docket

Rescheduling Trial Three Days Later

{¶53} We address these contentions jointly. Appellant again argues that the court abused its discretion by not granting a continuance on November 14, 2024. Appellant points out the Case Management Order

stated that continuances are permissible “for good cause shown.” Appellant contends that the failure to provide discovery and to discuss the case in depth could have been construed as good cause. Appellant also points out that there were no speedy trial concerns because he had posted bond shortly after arraignment.

{¶54} In essence, appellant is again arguing that the court abused its discretion in denying his family’s alleged call-in request for a continuance. We have resolved this argument fully above. Again, we are unpersuaded by appellant’s unsubstantiated allegations that his attorney failed to provide or discuss his discovery as this is in stark contrast to his statements at the plea hearing.

{¶55} Appellant also argues that the court indicated it would schedule the trial for three days later, even though it was unclear whether or not the State’s expert and witnesses were available on that date. Appellant contends this was nothing other than a coercive tactic. We disagree.

{¶56} It is well-established that a trial court has “inherent authority to control its own docket and manage the cases before it.” *See Teays Valley Local School District Board of Education v. Struckman*, 2023-Ohio-244, at ¶ 48 (internal citations omitted), citing *Horman v. Veverka*, 30 Ohio St.3d 41, 42-43 (1987) (recognizing “trial court's inherent power with respect to its

orders and docket”). *See also State v. Dunbar*, 2020-Ohio-4568, at ¶36 (8th Dist.). Jackson County Local Rule 35.13 provides that “[t]he Court shall utilize the services of prospective jurors so as to minimize inconvenience to jurors.”

{¶57} The trial court cannot read minds. Appellant’s family called in on November 14 to inform that they were getting a new attorney and assuming appellant’s trial date would be continued. However, appellant never asked for a continuance himself and apparently did not ask his attorney to request one. Yet, when appellant presented on November 18, 2024, 45 minutes late, and the jurors had been dismissed, he initially indicated he still wanted a jury trial. When appellant failed to appear in a timely manner and the jurors were released, the trial court may have found it would minimize inconvenience to the court and others to reschedule three days later.

{¶58} Given the trial court’s authority to manage its own docket, we do not find that the trial court’s “expedited docket” or indication that it would reschedule in three days to be coercive or unfair. Based on the foregoing, appellant has not demonstrated manifest injustice.

Pressure from the Trial Court

{¶59} Appellant contends that the trial court was actively involved in plea bargaining at the November 6, 2024 pretrial hearing, pressuring him with the risks of trial, and reminding him that he did not accept “last minute plea bargains.” Under these circumstances, appellant again argues that his counsel should have requested a continuance of the trial on this date. We are unpersuaded that the trial court’s remarks at the November 6, 2024 pretrial were undue pressure constituting a manifest injustice.

{¶60} The record reflects that at the November 6, 2024 pretrial, the trial court advised appellant that there was such a “crowded docket” that the court would not “do last minute plea bargains.” The court also explained that appellant could come in the day of trial and enter a plea, but that there would be no amendment of the indictment. Furthermore, appellant ultimately did not enter a plea on November 6, 2024. We fail to see how the court created a manifest injustice by reminding appellant of the court’s status, its policies, and the reason for its policy.

Revoking Bond and Threatening with Additional Felony Charge and
Requiring Appellant to Meet with Counsel.

{¶61} Appellant points to the trial court’s statements about his bond and the possibility of an additional felony of escape as threats creating manifest injustice. We disagree. Upon arraignment, appellant was given a cash/surety bond in the amount of \$200,000. On August 22, 2024, an initial

order on arraignment advises appellant that he is to “make all court appearances – failure to appear on an own recognizance (OR) bond may result in an additional felony charge of failure to appear – additionally a WARRANT may issue for your arrest.” The conditions of release, signed by appellant, included that appellant “personally appear” and “not depart without leave until such case is finally disposed of...”

{¶62} Appellant was 45 minutes late. Since his family had inquired about a continuance, it is possible that the court thought appellant simply did not want to present and face the trial. Given that the jurors had been dismissed, the trial court may have been concerned that appellant would interpret that he too was free to leave. The trial court’s reminder to appellant of the conditions of his bond should have come as no surprise. We are not convinced that the trial court’s admonishments about appellant’s bond and a possible new felony for escape if he left the building created undue pressure or a manifest injustice.

{¶63} Based on the foregoing, we agree with the trial court’s decision finding no manifest injustice occurred due to ineffective assistance of counsel.

Thus, the trial court did not abuse its discretion in denying appellant’s post-sentence motion to withdraw his guilty plea.

Failing to Conduct a Hearing

{¶ 64} Appellant acknowledges that the court's decision denying his motion to withdraw plea was based upon his own responses during the November 18, 2024 plea colloquy. However, he argues that the court failed to consider its own conduct, threats, and pressure, explicitly and implicitly placed upon Mr. Wise. And, appellant argues that a hearing on his motion was needed so that he might "voice the ineffective assistance of counsel and due process concerns.

{¶ 65} As set forth above, a hearing is not required if the facts alleged by the defendant, even if accepted as true, would not require the court to grant the motion to withdraw. First, we note that appellant's motion to withdraw his plea is supported only by his affidavit, set forth in pertinent part above. The facts alleged in his affidavit are the same facts as argued herein. Essentially, appellant contends that his counsel did not provide him with partial discovery until November 14, 2024. He argues that he was forced to accept or reject the plea between October 17, 2024 and November 6, 2024 without the benefit of any discovery.

{¶ 66} Assuming these facts as true, we find the trial court was not required to conduct a hearing on appellant's post-sentence motion. We can fairly assume that appellant would have testified to the same facts appellant

argues in the motion and in this appeal. On November 18, he advised the court that he had had enough time to speak to his attorney, that she had talked to him about the case, that they had reviewed discovery, and that he had had enough time to think about the matter. The underlying record irrefutably contradicts the allegations in the post-sentence motion to withdraw.^{1 2}

{¶67} Based on the foregoing, we find no abuse of discretion by the trial court's choice not to conduct a hearing on appellant's motion to withdraw his guilty plea.

{¶69} Under the first assignment of error, appellant challenged the trial court's decision denying the post-sentence motion to withdraw his guilty plea without a hearing. The trial court found no ineffective assistance of counsel and therefore, no manifest injustice for that reason. We agree with that determination. Upon review, we have further determined that the trial court's alleged threatening or coercive actions did not constitute a manifest injustice. Because appellant has not established a manifest injustice occurred, the trial court was not required to conduct a hearing on

¹ And despite the fact that the offer seemingly was open between October 17, 2024 and November 6, 2024, ultimately, it appears that appellant was allowed to avail himself of the same State's offer on November 18, 2024.

² To the extent that appellant again criticizes his counsel's alleged failure to meet with him and timely provide discovery as matters which a hearing would shed light upon, we again observe that these are all matters outside of the record and more properly raised in postconviction proceedings. *See State v. Jackson*, 2026-Ohio-1486, at fn. 2 (4th Dist.).

his motion. Accordingly, appellant's first assignment of error is without merit and is hereby overruled in its entirety.

Assignment of Error Two

Ineffective Assistance of Counsel

{¶70} The applicable standard of review has been set forth fully above. We will not address the arguments previously made within assignment of error one. The only new assertion under the second assignment of error is that Attorney Reno left employment with the Ohio Public Defender's Office immediately after the change of plea and sentencing. Appellant argues that while she represented him she was working with "one foot out of the door." Appellant asserts there is "grave concern" as to whether or not his attorney was working zealously on his behalf given her impending job change.

{¶71} However, appellant admits this is speculation. It is well-settled that speculation is insufficient to establish the prejudice component of an ineffective assistance of counsel claim. *E.g., State v. Mallory*, 2026-Ohio-1688, at ¶ 53 (4th Dist.) (Citations omitted.) *Accord State v. Powell*, 2012-Ohio-2577, ¶ 86. If one component of ineffective assistance is dispositive, a court need not analyze both. *Mallory, supra*, citing *State v. Madrigal*, 87

Ohio St.3d 378,389 (2000). Therefore, appellant's second assignment of error is also without merit and is hereby overruled.

Conclusion

{¶72} We have overruled both assignments of error. Particular to appellant's ineffective assistance claim, we note, as did the trial court, that appellant never argued that but for the alleged ineffective assistance, he would not have entered his plea. The trial court also observed that while claiming there were defenses that his attorney failed to explore, appellant never asserted actual innocence in his motion to withdraw.

{¶73} Now, appellant protests his innocence in the last paragraph of his appellate brief. But no manifest injustice has been shown. We can only conclude that appellant has had a change of heart about entering his guilty plea. A mere change of heart forms an insufficient basis to withdraw a guilty plea; it makes no difference as to whether the motion is a pre-sentence motion or a post-sentence motion. *See State v. Peck*, 2015-Ohio-1279, at ¶ 50 (7th Dist.). The judgment of the trial court is affirmed.

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 Jackson 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 set forth in 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.

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

For the Court,

Jason P. Smith
Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 22, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.