

IN THE OHIO COURT OF APPEALS
FIFTH APPELLATE DISTRICT
STARK COUNTY, OHIO

STATE OF OHIO

Plaintiff - Appellee

-vs-

FLOYD J. COSAVAGE, JR.

Defendant - Appellant

Case No. 2025CA00179

Opinion and Judgment Entry

Appeal from the Canton Municipal Court,
Case No. 2024TRC5726

Judgment: Affirmed

Date of Judgment Entry: August 20, 2026

BEFORE: William B. Hoffman; Craig R. Baldwin; Robert G. Montgomery, Judges

APPEARANCES: Jason P. Reese, Canton City Law Director, Kristina M. Lockwood, Canton City Prosecutor, Christopher Buswell, Assistant Prosecutor, for Plaintiff-Appellee; Floyd J. Cosavage, Jr. Pro se, for Defendant-Appellant.

Hoffman, P.J.

{¶1} Defendant-appellant Floyd J. Cosavage, Jr. appeals the December 23, 2025 Judgment Entry entered by the Canton Municipal Court, which denied his motion to withdraw guilty plea, vacate void judgment, and dismiss for lack of jurisdiction. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE CASE¹

{¶2} On April 1, 2022, Appellant was charged with OVI refusal – Offense #1 – 20 YR Offense #2, in violation of R.C. 4511.19(A)(1)(a), and failure to control, in violation of R.C. 4511.202. Appellant was arraigned on the charges on April 6, 2022, and released on bond. Through counsel, Appellant executed a written waiver of his speedy trial rights and filed a jury demand.

{¶3} Appellant filed a motion to suppress/limine on May 9, 2022. The trial court scheduled the motion for hearing on May 31, 2022, and ordered all parties to appear. After Appellant failed to appear at the hearing, the trial court issued a bench warrant. Appellant was arrested on a separate matter in Hamilton County on August 2, 2023, and transported to the Stark County Jail pursuant to the active bench warrant. A jury trial was scheduled for August 31, 2023. Appellant filed a pro se motion to dismiss, which the trial court denied.

{¶4} Appellant, without counsel, appeared before the trial court on August 31, 2023, and entered a guilty plea to Amended Count 1, physical control while under the influence, in violation of R.C. 4511.194. The trial court ordered Appellant to serve 180 days in jail and pay a fine of \$250.00. The State moved to dismiss Count 2, failure to control vehicle. The trial court memorialized Appellant's conviction and sentence via Judgment Entry filed August 31, 2023. Appellant did not file an appeal from this judgment entry.

{¶5} On September 8, 2023, Appellant filed a pro se motion to move the court to revoke plea, demand trial, which the trial court denied via Judgment Entry filed September 12, 2023. Appellant filed a motion to challenge jurisdiction, reverse and vacate sentence –

¹ A Statement of the Facts is not necessary to our disposition of this appeal.

nunc pro tunc on September 29, 2023, which the trial court denied on the same day. Appellant filed a Notice of Appeal on October 1, 2023. This Court ordered Appellant to file a fully completed docketing statement on or before November 30, 2023. Appellant failed to do so and this Court dismissed his appeal for failure to prosecute. December 6, 2023 Judgment Entry.

{¶6} On December 17, 2025, Appellant filed a pro se motion to withdraw guilty plea, vacate void judgment, and dismiss for lack of jurisdiction. Therein, Appellant asserted the trial court's August 31, 2023 Judgment Entry was void because he "was not lawfully within [the] Court's jurisdiction, was denied the right to counsel, subjected to unauthorized hybrid representation by conflicted prior counsel, and entered a plea induced by a court officer." December 17, 2025 Motion to Withdraw Guilty Plea, Vacate Void Judgment, and Dismiss for Lack of Jurisdiction at p. 2, unpaginated. The trial court denied Appellant's motion via Judgment Entry filed December 23, 2025.

{¶7} It is from that judgment entry Appellant appeals, raising the following assignments of error:

I. THE TRIAL COURT ERRED AS A MATTER OF LAW BY EXERCISING JURISDICTION WHERE APPELLANT WAS HELD AND CONVEYED UNDER THE AUTHORITY OF ANOTHER COURT WITHOUT ANY JOURNALIZED ORDER CONFERRING JURISDICTION UPON THE CANTON MUNICIPAL COURT. (SUBJECT TO DE NOVO REVIEW).

II. THE TRIAL COURT ERRED BY PROCEEDING AFTER APPELLANT WAS DETAINED FOR WEEKS WITHOUT ARRAIGNMENT, BOND, OR JUDICIAL DETERMINATION OF PROBABLE CAUSE, IN VIOLATION OF CRIM.R. 10, CRIM.R. 46, AND DUE PROCESS. (STRUCTURAL ERROR; NOT SUBJECT TO HARMLESS-ERROR ANALYSIS).

III. THE TRIAL COURT ERRED BY PERMITTING MUNICIPAL PROCEEDINGS TO BE INDUCED BY LEVERAGE ARISING FROM CUSTODY BEYOND THE COURT'S JURISDICTION, IN VIOLATION OF DUE PROCESS. (DUE PROCESS VIOLATION REVIEWED DE NOVO).

IV. THE TRIAL COURT ERRED BY ALLOWING APPOINTED COUNSEL TO WITHDRAW DUE TO CONFLICT WITHOUT APPOINTING CONFLICT-FREE COUNSEL OR OBTAINING A KNOWING, INTELLIGENT, AND VOLUNTARY WAIVER. (STRUCTURAL ERROR AFFECTING THE RIGHT TO COUNSEL).

V. THE TRIAL COURT ERRED BY PARTICIPATING IN PLEA DISCUSSIONS WHILE APPELLANT WAS INCARCERATED AND UNREPRESENTED, RENDERING THE PLEA INVOLUNTARY. (STRUCTURAL ERROR AFFECTING PLEA VALIDITY).

VI. THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING APPELLANT'S CRIM.R. 32.1 MOTION WITHOUT ADJUDICATING SWORN AFFIDAVIT EVIDENCE OR CONDUCTING

AN EVIDENTIARY HEARING. (ABUSE OF DISCRETION, WITH DE NOVO REVIEW OF LEGAL QUESTIONS).

VII. THE TRIAL COURT ERRED BY ISSUING AND ENFORCING A DEFECTIVE JUDGMENT ENTRY BEARING AN INCORRECT CASE NUMBER AND FAILING TO PROPERLY MEMORIALIZE THE OFFENSE AND PROCEEDINGS. (QUESTION OF LAW REVIEWED DE NOVO).

VIII. THE TRIAL COURT ERRED BY IMPOSING AN UNAUTHORIZED SENTENCE AND FAILING TO CORRECT THE RECORD. (VOID SENTENCE AS A MATTER OF LAW).

IX. THE TRIAL COURT LACKED JURISDICTION AND HAD NO POWER TO ACT, RENDERING ALL PROCEEDINGS VOID AB INITIO. (JURISDICTIONAL DEFECT REVIEWABLE AT ANY TIME).

{¶8} The State filed a motion to dismiss the appeal on April 20, 2026, asserting the appeal should be dismissed as untimely and for lack of a final, appealable order. This Court denied the motion via Judgment Entry filed May 14, 2026.

{¶9} Although Appellant has filed this appeal pro se, he, nevertheless, “like members of the bar,” is “required to comply with rules of practice and procedure.” *Hardy v. Belmont Correctional Inst.*, 2006-Ohio-3316, ¶ 9 (10th Dist.). “[A]n appellate court will ordinarily indulge a pro se litigant where there is some semblance of compliance with the appellate rules.” (Internal quotations omitted.) *State v. Richard*, 2005-Ohio-6494, ¶4 (8th Dist.). In a pro se action, this Court will allow latitude to the unrepresented defendant in the

presentation of his case, however, “a substantial disregard of the whole body of these rules cannot be tolerated.” *Wellington v. Mahoning Cty. Bd. of Elections*, 2008-Ohio-554, ¶ 18.

{¶10} Furthermore, this Court does not have discretion and must disregard facts, arguments, or evidence presented in the appellate brief when those facts, arguments, or evidence were not presented to the trial court. “[A] reviewing court cannot add matter to the record before it that was not a part of the trial court's proceedings and then decide the appeal on the basis of the new matter.” (Internal citation omitted.) *State v. Hooks*, 92 Ohio St. 3d 83. New material and factual assertions contained in any brief in this court may not be considered. See *North v. Beightler*, 2006-Ohio-6515, ¶ 7, quoting *Dzina v. Celebrezze*, 2006-Ohio-1195, ¶ 16. Therefore, we have disregarded facts Appellant’s brief and exhibits attached to that brief, which are outside of the trial court record. *State v. Stevens*, 2023-Ohio-2736, ¶ 16 (5th Dist.).

I, II, III, IV, V, VI, VII, VIII, IX

{¶11} Crim. R. 32.1 governs the withdrawal of guilty pleas and 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.

{¶12} Crim. R. 32.1.

{¶13} A motion made pursuant to Crim.R. 32.1 is addressed to the sound discretion of the trial court. The good faith, credibility, and weight of the movant's assertions in support

of the motion are matters to be resolved by that court. *State v. Smith*, 49 Ohio St.2d 261, paragraph two of the syllabus (1977). Thus, we review a trial court's denial of a motion to withdraw a guilty plea under an abuse-of-discretion standard. *Id.*; *State v. Straley*, 159 Ohio St.3d 82, 2019-Ohio-5206, ¶ 15, 147 N.E.3d 623.

{¶14} 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. *Id.* at paragraph one of the syllabus. A “manifest injustice” is a “clear or openly unjust act,” which is “evidenced by an extraordinary and fundamental flaw in a plea proceeding.” (Internal citation omitted.) *State v. Tekulve*, 2010-Ohio-3604, ¶ 7 (1st Dist.). The term “has been variously defined, but it is clear that under such standard, a post-sentence withdrawal motion is allowable only in extraordinary cases.” *Smith*, *supra* at 264.

{¶15} Res judicata generally bars a defendant from raising claims in a Crim. R. 32.1 post-sentence motion to withdraw a guilty plea which he raised or could have raised on direct appeal. *State v. Ketterer*, 2010-Ohio-3831, ¶ 59. However, “[a] jurisdictional defect cannot be waived.” (Citation omitted.) *State ex rel. Tubbs Jones v. Suster*, 84 Ohio St.3d 70, 75 (1998). “This means that the lack of jurisdiction can be raised at any time, even for the first time on appeal.” (Citation omitted.) *Id.*

{¶16} Despite a thorough review of his Brief to this Court, we find Appellant’s arguments to be incomprehensible. The best we can determine is Appellant is attempting to challenge the trial court’s jurisdiction. We again note Appellant did not appeal his original conviction. Additionally, in September, 2023, Appellant previously sought to revoke his plea and challenge the trial court’s jurisdiction. His appeal therefrom was dismissed by this Court for lack of prosecution. Res judicata bars Appellant from raising the issue again.

{¶17} Appellant failed to appear at the scheduled May 31, 2022 hearing on his motion to suppress/limine. As a result, the trial court issued a bench warrant. Appellant was arrested on a separate matter in Hamilton County on August 2, 2023, and transported to the Stark County Jail based upon the active bench warrant out of Canton Municipal Court. Appellant's transfer back to Canton was appropriate. We find the trial court had subject matter jurisdiction and Appellant was properly before the court.

{¶18} Based upon the foregoing, Appellant's first, second, third, fourth, fifth, sixth, seventh, eighth, and ninth assignments of error are overruled.

{¶19} The judgment of the Canton Municipal Court is affirmed.

{¶20} Costs to Appellant.

By: Hoffman, P.J.

Baldwin, J. and

Montgomery, J. concur.