

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

STATE OF OHIO

Plaintiff - Appellee

-vs-

ANTHONY DOMINIC KENNEDY,
SR.

Defendant - Appellant

Case No. 2026CA00091

Opinion And Judgment Entry

Appeal from the Municipal Court Case No. 2006
CRB 04017

Judgment: Affirmed

Date of Judgment Entry: August 24, 2026

BEFORE: Andrew J. King; Craig R. Baldwin; David M. Gormley, Judges

APPEARANCES: JASON P. REESE, KRISTINA M. LOCKWOOD for Plaintiff-Appellee; ANTHONY DOMINIC KENNEDY, SR., PRO SE, for Defendant-Appellant.

King, P.J.

{¶ 1} Defendant-Appellant Anthony Dominic Kennedy, Sr. appeals the April 28, 2026 judgment of the Canton Municipal Court which denied his motion to withdraw his guilty plea. Plaintiff-Appellee is the State of Ohio. We affirm the trial court.

Facts and Procedural History

{¶ 2} In September, 2006, Kennedy entered a no contest plea to one count of domestic violence, a first-degree misdemeanor. No transcript of Kennedy's plea is included in the record. However, the available record does include a signed "Explanation of Rights" which was signed by Kennedy on September 6, 2006. Relevant to this appeal, that document indicates the trial court advised Kennedy of his right to counsel before entering his plea and that Kennedy waived that right.

{¶ 3} Nearly 20 years later, Kennedy filed a motion to withdraw his plea. The State filed a reply which argued Kennedy had failed to demonstrate a manifest injustice pursuant to Crim.R. 32.1. Kennedy's subsequent reply argued, for the first time, that his plea was not knowingly, intelligently, or voluntarily made because he was unrepresented.

{¶ 4} On April 27, 2026, a hearing was held on Kennedy's motion. No transcript of the hearing is included in the record. On April 28, 2026, via judgment entry, the trial court denied Kennedy's motion.

{¶ 5} Kennedy filed an appeal and the matter is now before this court for consideration. He raises one assignment of error as follows:

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{¶ 6} "THE TRIAL COURT ERRED IN DENYING DEFENDANT'S MOTION TO WITHDRAW PLEA UNDER CRIM.R. 32.1 WHERE THE RECORD DOES NOT AFFIRMATIVELY DEMONSTRATE THAT THE PLEA WAS ENTERED KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY."

{¶ 7} In his sole assignment of error Kennedy argues the record is devoid of any evidence to support a conclusion that his plea was knowingly, intelligently, and voluntarily made, or that the trial court complied with Crim.R. 11. He further argues the trial court relied on materials which were not provided to him in making its decision to deny his motion. Kennedy argues the trial court therefore erred in denying his motion to withdraw his plea. We disagree.

{¶ 8} As an initial matter, Kennedy has failed to provide a transcript of his plea hearing, or a transcript of the hearing on his motion to withdraw his plea. Absent the transcript, we are unable to review the Crim.R. 11 exchange between the trial court and

Kennedy or the content of the hearing on his motion to withdraw his plea. In *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199 (1980), the Supreme Court of Ohio held the following:

The duty to provide a transcript for appellate review falls upon the appellant. This is necessarily so because an appellant bears the burden of showing error by reference to matters in the record. See *State v. Skaggs*, 53 Ohio St.2d 162 (1978). This principle is recognized in App.R. 9(B), which provides, in part, that " . . . the appellant shall in writing order from the reporter a complete transcript or a transcript of such parts of the proceedings not already on file as he deems necessary for inclusion in the record" When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court's proceedings, and affirm. (Footnote omitted.)

{¶ 9} Because Kennedy has failed to provide a transcript, we presume the regularity of Kennedy's plea hearing. While we recognize the possibility that a transcript or recording of Kennedy's 2006 plea may no longer be available due to the passage of time, that fact does not change our presumption of regularity. "The presumption of regularity applies in instances in which the defendant files a delayed appeal after the record is no longer available under R.C. 2301.20." *State v. Hunt*, 2019-Ohio-1982, ¶ 9 (8th Dist.), citing *State v. Frazier*, 1990 Ohio

App. LEXIS 1457, at *4 (8th Dist.). We find Kennedy's appeal from a motion to withdraw his 20-year old plea procedurally similar to a delayed appeal.

{¶ 10} Finally, Kennedy's complaint regarding the trial court's reliance on materials not provided to him appears to pertain to his signed plea form. We note that pursuant to Crim.R. 16, discovery is not available in post-conviction proceedings, including proceedings concerning a motion to withdraw a guilty plea. Further, the document was provided to Kennedy when he entered his plea. Kennedy's complaint is therefore without merit.

{¶ 11} Based on our above determinations, Kennedy's sole assignment of error is overruled, and the judgment of the Canton Municipal Court is affirmed. Costs to appellant.

By: King, P. J.

Baldwin, J. and

Gormley, J. concur.