

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. 2026CA00053

Opinion And Judgment Entry

Appeal from the Stark County Court of
Common Pleas, Case No. 2015CR0368

Judgment: Affirmed

Date of Judgment Entry: September 29, 2026

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

APPEARANCES: KYLE L. STONE, Prosecuting Attorney, KAMEISHA J. JOHNSON, Assistant Prosecuting Attorney, for Plaintiff-Appellee; ANTHONY KENNEDY, SR., Pro Se, for Defendant-Appellant.

Baldwin, J.

{¶1} The appellant, Anthony Dominic Kennedy, Sr., appeals from the February 26, 2026, judgment entry of the Stark County Court of Common Pleas denying his post-sentence motion to withdraw his guilty plea. The appellee is the State of Ohio.

STATEMENT OF FACTS AND THE CASE

{¶2} On or about February 24, 2015, at an apartment on Eighth Street in Canton, the appellant struck the mother of his children, K.L., causing visible injury to her face and neck. The Stark County Grand Jury returned an indictment charging the appellant with one count of domestic violence in violation of R.C. 2919.25(A). The appellant entered a plea of not guilty at his arraignment.

{¶3} At a pretrial hearing on May 15, 2015, the appellant advised the trial court that, after consulting with his attorney, he wished to withdraw his plea of not guilty and enter a plea of guilty to the indictment. The appellant executed a written Crim.R. 11(C) plea form acknowledging that no threats or promises had been made to secure the plea and that he was pleading guilty freely and voluntarily. The trial court accepted the plea, ordered a presentence investigation, and thereafter sentenced the appellant to a three-year term of community control.

{¶4} On December 17, 2025, more than ten years after he entered his plea, the appellant filed a pro se motion seeking to vacate his conviction and withdraw his guilty plea. The appellant asserted his actual innocence and contended that his plea was not voluntary because the prosecutor declined to dismiss the case after the victim sought to have the charges dropped.

{¶5} The appellant attached three documents to the motion. The first was his own affidavit, in which he averred that he was not present during the altercation that gave rise to the charge and that the facts underlying his conviction were false. The second was an unsworn statement attributed to K.L., asserting that her injuries were caused by the appellant's mother, that the appellant was not present during the altercation, and that she had attempted to correct the police report shortly after the incident but was told the State would proceed regardless of her wishes. The third was an affidavit from the appellant's mother, executed roughly a decade after the events at issue, averring that the appellant left the apartment before the physical altercation between herself and K.L. and that none of K.L.'s injuries were caused by the appellant.

{¶6} The State filed a response in opposition, asking the trial court to deny the motion without a hearing. By judgment entry filed February 26, 2026, the trial court, having reviewed the motion and the materials submitted in support of it, found that the appellant had not established the existence of a manifest injustice and denied the motion.

{¶7} The appellant filed a timely notice of appeal and herein raises the following three assignments of error:

{¶8} “I. THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING DEFENDANT-APPELLANT’S MOTION TO WITHDRAW HIS GUILTY PLEA UNDER OHIO CRIMINAL RULE 32.1.”

{¶9} “II. THE TRIAL COURT ERRED IN DENYING DEFENDANT-APPELLANT’S MOTION WHERE A MANIFEST INJUSTICE WAS DEMONSTRATED.”

{¶10} “III. THE TRIAL COURT’S DENIAL OF DEFENDANT-APPELLANT’S MOTION VIOLATED HIS CONSTITUTIONAL RIGHT TO DUE PROCESS UNDER THE FOURTEENTH AMENDMENT.”

I., II.

{¶11} In his first and second assignments of error, the appellant argues that the affidavits he submitted established a manifest injustice and that the trial court failed to evaluate them. We disagree.

{¶12} Because the two assignments of error raise a single question, we address them together.

STANDARD OF REVIEW

{¶13} The burden of establishing the existence of a manifest injustice rests on the defendant who seeks to withdraw his plea after sentence has been imposed. *State v. Smith*, 49 Ohio St.2d 261 (1977), paragraph one of the syllabus. The motion 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. *Id.* at 264.

{¶14} We therefore review solely for an abuse of discretion a trial court decision denying a Crim.R. 32.1 motion. *State v. Waterhouse*, 2022-Ohio-655, ¶ 7 (5th Dist.). An abuse of discretion implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). We may not substitute our judgment for that of the trial court.

ANALYSIS

{¶15} 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." A trial court considering a request to change a plea after sentence has been imposed must therefore determine whether there is a need to correct a manifest injustice. *State v. Leftwich*, 2022-Ohio-1153, ¶ 13 (5th Dist.).

{¶16} A manifest injustice relates to some fundamental flaw in the proceedings which results in a miscarriage of justice or is inconsistent with the demands of due process. *Leftwich* at ¶ 13, quoting *State v. Eckley*, 2017-Ohio-8455, ¶ 19 (5th Dist.). The flaw must be so extraordinary that the defendant could not have sought redress from the resulting prejudice through any form of application reasonably available to him. *State v. Dull*, 2020-Ohio-4229, ¶

15 (5th Dist.). A post-sentence motion to withdraw a plea is allowable only in extraordinary cases. *Smith* at 264.

{¶17} The appellant relies on *State v. Xie*, 62 Ohio St.3d 521 (1992), for the proposition that a trial court must give full and fair consideration to a request to withdraw a plea. *Xie* addressed a presentence motion to withdraw, which is to be freely and liberally granted. *Id.* at 527. The appellant moved to withdraw his plea more than ten years after sentence was imposed. The manifest-injustice standard of Crim.R. 32.1 governs his motion, not the more permissive standard described in *Xie*.

{¶18} The appellant's central premise is that he placed sworn affidavits before the trial court which, if believed, would establish his innocence, and that the court was therefore obliged either to credit them or to explain why it did not. The premise misstates both what he filed and the governing law. To carry his burden, a defendant must present evidence, either from the record or in the form of an affidavit, which meets a minimum level of cogency to support the allegations made in the motion. *State v. Haser*, 2022-Ohio-4375, ¶ 20 (5th Dist.), citing *State v. Hutchison*, 2018-Ohio-200, ¶ 43 (5th Dist.).

{¶19} The appellant's submission did not satisfy that threshold. The document on which his claim of innocence ultimately depends, the recantation attributed to the victim, is not an affidavit at all because it is unsworn. It is not evidentiary-quality material, and the trial court was not obliged to treat it as though it were.

{¶20} The two remaining documents are affidavits from the appellant himself and from his mother. A self-serving affidavit by the moving party, in and of itself, is generally insufficient to demonstrate manifest injustice. *State v. Norris*, 2019-Ohio-3768, ¶ 24 (8th Dist.); *State v. Patterson*, 2004-Ohio-1569, ¶ 20 (5th Dist.). Ohio courts have likewise held that

affidavits from interested parties such as defendants and family members are self-serving and may be discounted. *State v. Robinson*, 2013-Ohio-5672, ¶ 17 (12th Dist.), quoting *State v. Nicholson*, 2012-Ohio-4591, ¶ 19 (8th Dist.). Recantations of prior witness statements must in any event be examined with the utmost suspicion. *Robinson* at ¶ 18, quoting *State v. Linder*, 2013-Ohio-5018, ¶ 14 (8th Dist.).

{¶21} Beyond their source, both affidavits are irreconcilable with the plea the appellant entered. A plea of guilty constitutes a complete admission of guilt. Crim.R. 11(B)(1); *State v. Tomlin*, 2026-Ohio-439, ¶ 9 (5th Dist.). By entering that plea, the appellant admitted guilt on the record and did not assert his innocence, and he is therefore presumed to understand that he has completely admitted his guilt. *State v. Griggs*, 2004-Ohio-4415, syllabus. A trial court cannot grant a motion to withdraw a plea based upon an affidavit which directly contradicts the record. *Nicholson* at ¶ 17. The appellant's averment that he was not present during the altercation, and his mother's belated willingness to accept responsibility for the victim's injuries, are of that character. Had the appellant wished to place his mother's account before a trier of fact, he was free to do so. He instead elected to admit his guilt and forgo the opportunity to contest the State's evidence.

{¶22} A trial court is permitted to weigh precisely these considerations. While a court should give due deference to affidavits sworn under oath, it may, in the sound exercise of discretion, judge their credibility in determining whether to accept them as true statements of fact. *State v. Calhoun*, 86 Ohio St.3d 279, 284 (1999). Among the factors relevant to that assessment are whether the affiant is a relative of the movant or is otherwise interested in the success of the movant's efforts. *State v. Little*, 2022-Ohio-1295, ¶ 20 (10th Dist.), quoting *Calhoun* at 285. A trial court may also find sworn testimony in an affidavit to be contradicted

by evidence in the record by the same witness, or to be internally inconsistent, thereby weakening the credibility of that testimony. *Calhoun* at 285. The appellant's contention that the trial court was required to accept his affidavits at face value is therefore incorrect.

{¶23} The appellant further argues that the passage of time between his plea and his motion is not dispositive. He is correct that delay does not, standing alone, bar relief, but it is a proper consideration. An undue delay between the occurrence of the alleged cause for withdrawal of a guilty plea and the filing of a motion under Crim.R. 32.1 is a factor that adversely affects the credibility of the movant and weighs against granting the motion. *State v. Smith*, 49 Ohio St.2d 261 (1977), paragraph three of the syllabus; *State v. Dull*, 2020-Ohio-4229, ¶ 14 (5th Dist.). The length of the passage of time between the entry of a plea and the filing of such a motion is a valid factor in determining whether a manifest injustice has occurred. *State v. Croskey*, 2018-Ohio-2078, ¶ 18 (5th Dist.).

{¶24} Delays considerably shorter than the appellant's have factored into that assessment. *See State v. Devore*, 2020-Ohio-4668, ¶ 20 (5th Dist.) (considering the five-year interval between the successful termination of Devore's community control and the filing of his motion to withdraw guilty pleas); *State v. Ford*, 2019-Ohio-2991, ¶ 14 (5th Dist.) (weighing a delay of almost four years between sentencing and the filing of the motion to withdraw); *State v. Martin*, 2012-Ohio-4394, ¶ 14 (5th Dist.) (noting that the motion to withdraw was filed almost sixteen months after sentencing); *Croskey* at ¶ 18 (considering a delay of roughly six months between sentencing and the filing of the motion). The appellant waited more than ten years and offered the trial court no explanation for the delay. The trial court was entitled to weigh that silence against him in assessing the credibility of the materials he belatedly produced.

{¶25} Affidavits of this kind offer no convincing support for a manifest-injustice finding. *State v. Sanchez*, 2026-Ohio-1497, ¶ 29 (5th Dist.). On this record, the trial court's conclusion that the appellant failed to establish a manifest injustice was neither unreasonable, arbitrary, nor unconscionable. This is not the extraordinary case in which a plea entered more than a decade ago may be set aside.

{¶26} The appellant's first and second assignments of error are overruled.

III.

{¶27} In his third assignment of error, the appellant contends that the trial court's denial of his motion without an evidentiary hearing, and without what he characterizes as a reasoned analysis of his affidavits, deprived him of due process. We disagree.

STANDARD OF REVIEW

{¶28} Whether to conduct an evidentiary hearing on a post-sentence motion to withdraw a guilty plea rests within the sound discretion of the trial court, and we review that decision for an abuse of discretion. *State v. Bable*, 2019-Ohio-1209, ¶ 34 (5th Dist.), citing *State v. Smith*, 49 Ohio St.2d 261, 264 (1977). Again, an abuse of discretion implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). We may not substitute our judgment for that of the trial court.

ANALYSIS

{¶29} A trial court need not hold an evidentiary hearing on a post-sentence motion to withdraw a guilty plea if the record indicates that the movant is not entitled to relief and the movant has failed to submit evidentiary documents sufficient to demonstrate a manifest injustice. *State v. Devore*, 2020-Ohio-4668, ¶ 22 (5th Dist.).

{¶30} For the reasons set forth above, the appellant's motion and its supporting materials did not raise sufficient operative facts to warrant relief. A trial court does not abuse its discretion in deeming such documents insufficient to warrant a hearing. *State v. Haser*, 2022-Ohio-4375, ¶ 20 (5th Dist.), citing *State v. Hutchison*, 2018-Ohio-200, ¶ 43 (5th Dist.).

{¶31} The appellant also argues that credibility is an inherently factual question which cannot be resolved without live testimony. That argument inverts the governing law. He relies on *State v. Calhoun*, 86 Ohio St.3d 279 (1999), but *Calhoun* holds that a trial court may assess the credibility of supporting affidavits and may do so without first conducting an evidentiary hearing. *Calhoun* at paragraph one of the syllabus. The trial court did what *Calhoun* expressly permits.

{¶32} The appellant's remaining contention is that the trial court failed to provide a reasoned analysis of his claims. Crim.R. 32.1 does not require a court to issue findings of fact and conclusions of law when ruling on a motion to withdraw a guilty plea. *State ex rel. Chavis v. Griffin*, 91 Ohio St.3d 50, 51 (2001); *see also Haser* at ¶ 30. The deference owed sworn testimony does not attach to the unsworn statement on which the appellant's claim of innocence depends. As to the two affidavits, the basis for the trial court's determination is apparent from its entry, which recited the applicable standard, stated that the court had reviewed the motion and the materials submitted with it, adopted the reasons set forth in the State's response in opposition, and found that the appellant had not carried his burden. Nothing further was required.

{¶33} The appellant was afforded the process he was due. He presented his claim to the trial court in writing, with supporting materials, and the trial court considered and rejected it. The Fourteenth Amendment requires no more in these circumstances.

{¶34} The appellant's third assignment of error is overruled.

CONCLUSION

{¶35} For the foregoing reasons, the judgment of the Stark County Court of Common Pleas is affirmed.

{¶36} Costs to the appellant.

By: Baldwin, J.

King, P.J. and

Gormley, J. concur.