[Cite as *State v. Mehl*, 2026-Ohio-4517.]

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

STATE OF OHIO Plaintiff-Appellee DAVID E. MEHL Defendant-Appellant	Case No. CT2026-0023 Opinion And Judgment Entry Appeal from the Muskingum County Court of Common Pleas, Case No. CR. 2025-0441 Judgment: Affirmed Date of Judgment Entry: November 12, 2026

BEFORE: Andrew J. King, Robert G. Montgomery, and Kevin W. Popham, Judges

APPEARANCES: Ron Welch, and Joseph A. Palmer, for Plaintiff-Appellee; Chris Brigdon, for Defendant-Appellant

OPINION

Popham, J.,

{¶1} Appellant David E. Mehl appeals from the Court of Common Pleas for Muskingum County, Ohio's denial of his oral presentence motion to withdraw his guilty pleas. For the reasons that follow, we affirm.

Facts and Procedural History

{¶2} On July 10, 2025, Mehl was indicted, along with several co-defendants, on fourteen counts. Count 1 charged Engaging in a Pattern of Corrupt Activity, a felony of the second degree. Counts 2, 3, 5, 7, and 11 charged Breaking and Entering, fifth-degree felonies, with forfeiture specifications. Counts 6, 8, and 10 charged Theft From a Person in a Protected

Class, specifically an elderly person, fifth-degree felonies. Counts 9 and 13 charged Possessing Criminal Tools, fifth-degree felonies. Count 12 charged Receiving Stolen Property, a first-degree misdemeanor, and Count 14 charged Grand Theft of a Motor Vehicle, a fourth-degree felony. Mehl was released on a surety bond on July 15, 2025.

{¶3} On September 8, 2025, the trial court scheduled the case for a change of plea hearing to take place on September 15, 2025.

{¶4} On September 15, 2025, Mehl executed a written Crim.R. 11 plea form setting forth the charges, the constitutional rights he was waving, the maximum penalties, and the terms of the negotiated plea. Pursuant to the agreement, the State agreed to dismiss Counts 3, 5, 7, 9, 10, and 12 in exchange for Mehl's guilty pleas to the remaining counts.

{¶5} That same day, the trial court conducted a plea hearing, accepting Mehl's guilty pleas to Counts 1, 2, 6, 8, 11, 13, and 14, and deferred sentencing pending preparation of a presentence investigation report ("PSI"). The trial court asked Mehl, "will you pass a drug test today? Mehl responded, "Yeah." Plea Tr. at 20. The court continued Mehl's surety bond, "as long as you pass a drug test today." *Id.*

{¶6} On September 16, 2025, the trial court issued a bench warrant after Mehl failed to appear for a drug screen that was a condition of his bond.

{¶7} On November 13, 2025, the State filed a motion to forfeit Mehl's bond, which the trial court granted the following day. On January 1, 2026, the surety filed a motion for a show-cause hearing or, alternatively, an extension of time, setting forth its efforts to locate Mehl. By Judgment Entry filed January 16, 2026, the trial court scheduled a show-cause hearing for February 4, 2026.

{¶8} On January 20, 2026, the Sheriff's Return on the Bench Warrant was filed, indicating that Mehl had been arrested on January 17, 2026.

{¶9} Sentencing was ultimately held on March 4, 2026. At the outset of the hearing, defense counsel advised the trial court that Mehl wished to withdraw his guilty pleas. Sent. Tr. at 2-3. Counsel explained that Mehl claimed he had been under the influence of drugs when he entered his pleas and did not understand the proceedings. *Id*. at 2-4. Counsel further informed the court that, after failing to appear for his drug screen, Mehl went to a drug-treatment facility but was unable to obtain a bed. *Id*. at 17. Counsel also noted that Mehl's last felony conviction had occurred nearly six years earlier and that his co-defendants had received sentences of four years and ten months, respectively.

{¶10} The trial court permitted Mehl to address the court. Sent. Tr. at 18-19. Mehl expressed dissatisfaction with his trial counsel and stated that he had been unaware of approximately $25,000 in restitution. *Id*. at 21-22. Mehl claimed that he had left his four-wheeler on the property because it had run out of gas. *Id*. at 21-22. He also claimed that police had shown him a video depicting a black car arriving at the property approximately two hours after he had left. *Id*. at 18-21. Mehl further asserted that some of the automobile and truck parts alleged to have been stolen belonged to him. *Id*. at 19-20. Mehl acknowledged taking a log splitter and some rims from the property and leaving his four-wheeler there. *Id.* at 20-21. He claimed that his attorney had failed to investigate these matters. *Id*. at 22-23.

{¶11} In response to questions from the trial court, Mehl admitted that, from September 2025 through January 2026, he was "laying low and getting high" because he knew he was going to jail. Sent. Tr. at 23-25. Mehl acknowledged that he did not turn himself in to

authorities and that he did not meet with his attorney during the approximately four months he was absent. *Id*. at 25.

{¶12} Following Mehl's statements, defense counsel responded that Mehl had been provided discovery on multiple occasions, had reviewed the evidence, and had been advised of his right to proceed to trial. Sent. Tr. at 26-27.

{¶13} The trial court noted that it had sentenced both of Mehl's co-defendants while Mehl was an absconder. *Id*. at 27. The court further stated that Mehl's version of events was inconsistent with the facts, the reports, and statements made by his co-defendants. *Id*. The court also noted that Mehl had declined to participate in preparation of the PSI. *Id.*

{¶14} The trial court overruled Mehl's oral motion to withdraw his guilty pleas and proceeded to sentencing. The court sentenced Mehl to an indefinite prison term of a minimum of eight years and a potential maximum of twelve years on Count 1. The court imposed twelve-month prison terms on each of Counts 2, 6, 8, 11, 13, and 14.

{¶15} The trial court ordered the sentences on Counts 11 and 13 to be served concurrently with each other but consecutively to the remaining counts. The court ordered the sentences on Counts 1, 2, 6, 8, and 14 to be served consecutively, followed by the concurrent sentences imposed on Counts 11 and 13. The resulting aggregate sentence was a minimum of thirteen years and a potential maximum of seventeen years.

Assignment of Error

{¶16} Mehl raises one assignment of error for our consideration:

{¶17} "I. DID [sic.] THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING APPELLANT'S PRESENTENCE MOTION TO WITHDRAW HIS GUILTY PLEA."

I.

{¶18} In his assignment of error, Mehl argues that the trial court erred by denying his presentence motion to withdraw his guilty pleas and by failing to conduct a hearing on the motion. We disagree.

Governing Law

{¶19} Crim.R. 32.1 provides that a defendant may move to withdraw a guilty plea before sentence is imposed. The Supreme Court of Ohio has held that "a defendant's presentence motion to withdraw his guilty plea should be freely and liberally granted." *State v. Barnes*, 2022-Ohio-4486, ¶ 21, citing *State v. Xie*, 62 Ohio St.3d 521, 527 (1992). Thus, "when a defendant pleads guilty to one or more crimes and later wants to withdraw that plea before he has been sentenced, the trial court should permit him to withdraw his plea." *Barnes* at ¶ 21.

{¶20} The Supreme Court has also made clear, however, that "a defendant does not have an absolute right to withdraw a plea prior to sentencing." *Xie* at 527. Rather, the trial court must conduct a hearing to determine whether there is a "reasonable and legitimate" basis for withdrawing the plea. *Id.* Ultimately, the decision whether to grant or deny a presentence motion to withdraw a guilty plea rests within the trial court's discretion. *Id.* at paragraph two of the syllabus. We will not reverse that decision absent an abuse of discretion. *Id.* An abuse of discretion occurs when a trial court's decision is unreasonable, arbitrary, or unconscionable. *State v. Adams*, 62 Ohio St.2d 151, 157 (1980). Moreover, "[t]he good faith, credibility and weight of the movant's assertions in support of the [Crim.R. 32.1] motion are matters to be resolved by [the trial] court." *State v. Smith*, 49 Ohio St.2d 261 (1977), paragraph two of the syllabus.

Hearing

{¶21} We first address Mehl's contention that the trial court failed to conduct a hearing on his motion.

{¶22} The Supreme Court of Ohio has stated that a trial court must conduct a hearing to determine whether there is a reasonable and legitimate basis for withdrawing a guilty plea. *Xie* at 527. The Court, however, did not prescribe the type or scope of hearing required. Unlike the "manifest injustice" standard applicable to a post sentence motion, Crim.R. 32.1 provides no specific guidelines governing a presentence motion to withdraw a guilty plea. *State v. Znosko*, 2007-Ohio-5641 (5th Dist.), citing *State v. Calloway*, 2004-Ohio-5613, citing *Xie* at 526; *State v. Goins*, 2024-Ohio-4995, ¶ 17 (5th Dist.).

{¶23} The hearing must be sufficient to permit the trial court to determine whether the defendant has a reasonable and legitimate basis for withdrawing the plea. *Xie* at 527. The scope of the hearing should reflect the substantive merit of the motion itself. *Znosko* at ¶ 12. As long as the defendant is provided an opportunity to explain to the trial court why the plea should be withdrawn and to present any evidence necessary to support the request, the defendant has been afforded a full and fair hearing on the merits. *State v. Elkins*, 2016-Ohio-8579 (some inquiry is required to comply with minimum due-process standards); *Goins* at ¶ 18.

{¶24} A separate evidentiary hearing is not necessarily required. Ohio courts have held that a trial court's consideration of an oral motion to withdraw a guilty plea during the sentencing hearing may constitute a full and fair hearing on the motion. *State v. Johnson*, 2016-Ohio-8494 (10th Dist.); *State v. Mooty*, 2001-Ohio-1464 (2d Dist.); *State v. Eversole*, 2006-Ohio-3988 (6th Dist.). Similarly, this Court has not required a separate evidentiary hearing on a

presentence motion to withdraw a guilty plea. *State v. Shelton*, 2012-Ohio-4482 (5th Dist.); *Goins* at ¶ 19. When a motion is made during the sentencing hearing, that hearing may provide the defendant with the process required by *Xie*. *Shelton* at ¶ 21; *State v. Graham*, 2004-Ohio-2556 (5th Dist.).

{¶25} Here, the record demonstrates that the trial court adequately considered Mehl's motion at the sentencing hearing. At the outset of the hearing, defense counsel advised the court that Mehl wished to withdraw his guilty pleas and explained the reasons for the request. The trial court then permitted both counsel and Mehl to address the court. The court questioned Mehl concerning the basis for his request and considered his responses before ruling on the motion. Neither Mehl nor defense counsel requested a separate evidentiary hearing or a continuance to present additional evidence.

{¶26} Under these circumstances, the sentencing hearing provided Mehl an opportunity to explain the basis for his motion and to present the reasons he believed supported withdrawal of his pleas. The record therefore demonstrates that the trial court conducted a full and fair hearing as contemplated by *Xie*.

Motion to Withdraw

{¶27} The factors that may be considered by a trial court in determining whether to grant a presentence motion to withdraw a guilty plea include:

1. prejudice to the State;

2. the defendant's representation by competent counsel;

3. the adequacy of the Crim.R. 11 plea hearing;

4. the extent of the plea-withdrawal hearing;

5. whether the trial court gave full and fair consideration to the motion;

6. the timing of the motion;

7. the reasons for the motion;

8. whether the defendant understood the nature of the charges and potential sentences; and

9. whether the defendant was perhaps not guilty or had a complete defense to the charges.

State v. Fish, 104 Ohio App.3d 236, 240 (1st Dist. 1995). No single *Fish* factor is conclusive. *State v. Cuthbertson*, 139 Ohio App.3d 895, 899 (7th Dist. 2000); *State v. Shields*, 2023-Ohio-1561, ¶¶ 8-11 (5th Dist.).

{¶28} The Supreme Court of Ohio has not adopted the *Fish* factors as a mandatory test for determining whether a presentence motion to withdraw a guilty plea should be granted. *Barnes*, 2022-Ohio-4486, ¶24 and ¶36 (Brunner, J., concurring). The *Barnes* Court addressed a defendant who sought to withdraw his guilty plea after discovering evidence that would have affected his decision to plead guilty. The Court concluded that "when a defendant discovers evidence that would have affected his decision to plead guilty, he has a reasonable and legitimate basis to withdraw his guilty plea before sentencing." *Id.* at ¶ 24. The Court explained that the defendant had not pleaded guilty because of evidence establishing his guilt; rather, he was unaware of evidence corroborating his claim of self-defense. *Id.* at ¶ 26. Once the defendant learned of the video evidence, he had a reasonable and legitimate basis to withdraw his plea.

{¶29} Following *Barnes*, this Court has continued to apply the *Fish* factors, with the modification recognized in *Barnes*. *State v. McCormick*, 2023-Ohio-3496, ¶ 38 (5th Dist.); *State v. Kohler*, 2023-Ohio-1772, ¶ 15 (5th Dist.). Thus, the *Fish* factors remain useful in evaluating

a presentence motion to withdraw a guilty plea, except where the defendant seeks withdrawal because he subsequently discovered evidence that would have affected his decision to plead guilty. In such circumstances, *Barnes* controls and establishes a reasonable and legitimate basis for withdrawal.

{¶30} Here, Mehl does not contend that he discovered new evidence after entering his guilty pleas that would have affected his decision to plead guilty. Instead, he asserts that he was under the influence of drugs when he entered his pleas, challenges counsel's investigation and representation, disputes portions of the State's evidence, and asserts that some of the property involved in the offenses belonged to him. Accordingly, the *Barnes* exception is not implicated, and we proceed to consider the circumstances surrounding Mehl's motion under the factors identified in *Fish* and applied by this Court.

1. Prejudice to the State

{¶31} The record does not demonstrate that the State would suffer prejudice if Mehl's guilty pleas were withdrawn. The victim was present at the sentencing hearing to provide a victim-impact statement and evidence concerning restitution. Mehl's co-defendants had also entered pleas concerning their participation in the crimes. Moreover, the State did not allege that it would suffer prejudice from withdrawal of Mehl's pleas, either at the sentencing hearing or in its appellate brief.

{¶32} Accordingly, this factor weighs in favor of Mehl. However, the absence of prejudice to the State is not dispositive. A defendant does not have an absolute right to withdraw a guilty plea merely because the State cannot demonstrate prejudice.

2. Timeliness of the Motion to Withdraw the Pleas

{¶33} Mehl moved to withdraw his guilty pleas before sentencing. Ordinarily, the presentence timing of a motion weighs in favor of allowing withdrawal. Here, however, the circumstances surrounding the delay between the plea hearing and sentencing are relevant.

{¶34} Mehl entered his guilty pleas on September 15, 2025. Sentencing did not occur until March 4, 2026. The delay was not attributable to the trial court or the State. Rather, the record demonstrates that Mehl failed to appear for a required drug screen after entering his pleas, thereafter absconded and was not arrested until January 17, 2026. Mehl acknowledged that, during this period, he was "laying low and getting high" because he knew he was going to jail. Sent. Tr. at 23-25. He also acknowledged that he did not meet with his attorney during this period. *Id.* at 25.

{¶35} Thus, although Mehl's motion was made before sentencing, the record does not reflect that he promptly sought to withdraw his pleas. Instead, the substantial delay between the plea hearing and sentencing resulted from Mehl's own conduct.

3. Whether the Defendant Was Represented by Competent Counsel

{¶36} The record does not support Mehl's claim that counsel's representation provided a reasonable and legitimate basis for withdrawing his guilty pleas. At the September 15, 2025 plea hearing, Mehl advised the trial court that he was satisfied with counsel's representation. He did not express any concerns regarding counsel's performance or indicate that counsel had failed to investigate potential defenses.

{¶37} At the sentencing hearing, Mehl expressed dissatisfaction with counsel and claimed that counsel had failed to investigate his assertions concerning the property and evidence involved in the offenses. Counsel, however, advised the trial court that Mehl had

been provided discovery on multiple occasions, had reviewed the evidence, and had been advised of his right to proceed to trial. Sent. Tr. at 26-27.

{¶38} The record therefore does not establish that counsel's representation provided a reasonable and legitimate basis for withdrawing the pleas.

4. Adequacy of the Plea Hearing

{¶39} The record demonstrates that Mehl entered his guilty pleas knowingly, intelligently, and voluntarily. Mehl executed a written plea form, signed by both Mehl and his counsel, identifying the charges, potential penalties, terms of the negotiated plea agreement, and constitutional rights he agreed to waive. A written waiver of constitutional rights is presumed to have been made knowingly, intelligently, and voluntarily. *State v. Turner*, 2005-Ohio-1938, ¶ 25; *State v. Clark*, 38 Ohio St.3d 252, 261 (1988).

{¶40} During the plea hearing, the trial court advised Mehl of his constitutional rights, including his right to a jury trial, his right to confront witnesses, his right to compulsory process, his right to require the State to prove his guilt beyond a reasonable doubt, and his privilege against self-incrimination. Mehl acknowledged that he understood those rights, the nature of the charges, and the potential penalties. He further indicated that he was satisfied with counsel's representation.

{¶41} Mehl admitted his guilt on the record and did not, at the plea hearing, assert that he was innocent of any of the offenses to which he was pleading guilty. Nor did he advise the trial court that he was under the influence of drugs or otherwise unable to understand the proceedings. Mehl affirmatively told the trial judge that he would pass a drug test.

{¶42} Thus, the record demonstrates that the trial court complied with the constitutional requirements of Crim.R. 11 and substantially complied with the rule's nonconstitutional requirements. This factor weighs against withdrawal of the pleas.

5. Extent of the Plea Withdrawal Hearing and the Consideration Given to the Motion

{¶43} The trial court considered Mehl's motion before proceeding to sentencing. The court inquired into the basis for Mehl's request, permitted both Mehl and defense counsel to address the court, and questioned Mehl concerning his conduct following the plea hearing. Neither Mehl nor his counsel requested an evidentiary hearing or a continuance.

{¶44} Ohio courts have held that a trial court's consideration of an oral motion to withdraw a guilty plea during the sentencing hearing may constitute a full and fair hearing on the motion. *State v. Johnson*, 2016-Ohio-8494 (10th Dist.); *State v. Mooty*, 2001-Ohio-1464 (2d Dist.); *State v. Eversole*, 2006-Ohio-3988 (6th Dist.). Similarly, this Court has not required a trial court to conduct a separate evidentiary hearing on a presentence motion to withdraw a guilty plea. *State v. Shelton*, 2012-Ohio-4482 (5th Dist.); *State v. Goins*, 2024-Ohio-499.

{¶45} The record demonstrates that the trial court provided Mehl with a meaningful opportunity to explain the reasons for his request and considered those reasons before ruling on the motion. Accordingly, this factor does not support a finding that the trial court abused its discretion.

6. Reasons for Wanting to Withdraw the Pleas, Potential Defenses, and Whether the Defendant May Be Innocent

{¶46} The record reflects that the trial court considered these factors together. We find no abuse of discretion in the court's determination that Mehl failed to present a reasonable and legitimate basis for withdrawing his guilty pleas.

{¶47} The trial court permitted Mehl to address the court. Sent. Tr. at 18-19. Mehl expressed dissatisfaction with his trial counsel and stated that he had been unaware of approximately $25,000 in restitution. *Id.* at 21-22. Mehl claimed that he had left his four-wheeler on the property because it had run out of gas. *Id.* at 21-22. He also claimed that police had shown him a video depicting a black car arriving at the property approximately two hours after he had left. *Id.* at 18-21. Mehl further asserted that some of the automobile and truck parts alleged to have been stolen belonged to him. *Id*. at 19-20. Mehl acknowledged taking a log splitter and some rims from the property and leaving his four-wheeler there. *Id.* at 20-21. He claimed that his attorney had failed to investigate these matters. *Id.* at 22-23.

{¶48} Mehl also asserted, through counsel, that he was under the influence of drugs when he entered his guilty pleas and, as a result, did not understand the proceedings. We recognize that a defendant's claim that intoxication rendered a plea involuntary is a matter the trial court must consider when determining whether there is a reasonable and legitimate basis for withdrawal. The question is not simply whether a defendant used drugs, but whether the defendant's condition at the time of the plea impaired his ability to understand the proceedings and enter a knowing, intelligent, and voluntary plea.

{¶49} Here, however, Mehl did not raise any concern about his sobriety, his ability to understand the proceedings, or his ability to enter a knowing and voluntary plea during the September 15, 2025, plea hearing. To the contrary, Mehl executed a written plea form, participated in the plea colloquy, acknowledged that he understood the constitutional rights

he was waving and the potential penalties he faced, and expressed satisfaction with counsel's representation. He also entered guilty pleas to the offenses after the trial court explained the proceedings and determined that his pleas were being entered knowingly, intelligently, and voluntarily.

{¶50} Significantly, Mehl did not present the trial court with independent evidence demonstrating that he was intoxicated at the time of the plea or that his alleged drug use rendered him incapable of understanding the proceedings. His assertion was first presented at the sentencing hearing, nearly six months after the plea was entered. The trial court was entitled to consider that assertion in light of Mehl's contemporaneous statements during the plea colloquy and the other circumstances reflected in the record.

{¶51} During the change of plea hearing, Mehl assured the court when asked that he would pass a drug test that day. During the hearing on his motion to withdraw his plea, when questioned by the trial court, Mehl admitted that, from September 2025 through January 2026, he was "laying low and getting high" because he knew he was going to jail. Sent. Tr. at 23-25. Mehl's failure to submit to a drug test and his subsequent admission establishes drug use during the period following the plea, but it does not establish Mehl's condition, or incapacitation, on September 15, 2025, at the time the plea was entered.

{¶52} The trial court also noted that it had sentenced both of Mehl's co-defendants while Mehl was an absconder. *Id.* at 27. The court stated that Mehl's version of events was inconsistent with the facts, the reports, and statements made by his co-defendants. *Id.* The court further noted that Mehl had declined to participate in preparation of the PSI. *Id.*

{¶53} Although Mehl challenged aspects of the State's evidence and asserted that some of the property belonged to him, he did not identify newly discovered evidence that

materially undermined the charges to which he had pleaded guilty. Nor did he present evidence supporting a viable defense that was unavailable to him when he entered his pleas. Unlike the defendant in *State v. Barnes*, 2022-Ohio-4486, Mehl did not identify new evidence discovered after the plea hearing that supported his claim of innocence.

{¶54} The trial court was in the best position to evaluate Mehl's statements and credibility at the hearing. *See State v. Gilmore*, 2016-Ohio-2654 (5th Dist.), citing *State v. Xie*, 62 Ohio St.3d 521 (1992). On this record, we cannot say the trial court abused its discretion in determining that Mehl's explanations, including his assertion that he was under the influence of drugs when he entered his pleas, did not constitute a reasonable and legitimate basis for withdrawing his guilty pleas.

Conclusion

{¶55} Considering the relevant factors as a whole, the record supports the trial court's decision to deny Mehl's presentence motion to withdraw his guilty pleas. Although the State did not demonstrate prejudice and Mehl made his motion before sentencing, the remaining circumstances weigh against withdrawal. Mehl was represented by counsel, expressed satisfaction with counsel at the plea hearing, entered his pleas following a plea colloquy that complied with Crim.R. 11, and was afforded a meaningful opportunity to explain his reasons for seeking withdrawal.

{¶56} Mehl's subsequent assertions concerning his innocence, counsel's performance, and his alleged intoxication at the time of the plea were not supported by independent evidence demonstrating that he was unable to understand the proceedings or that a viable defense had emerged after he entered his pleas. The record instead reflects that Mehl absconded after entering his pleas, did not consult with counsel for approximately four

months, and later offered explanations that the trial court found inconsistent with the evidence and the accounts provided by his co-defendants.

{¶57} Under these circumstances, the trial court acted within its discretion in determining that Mehl failed to establish a reasonable and legitimate basis for withdrawing his guilty pleas. Accordingly, the trial court did not abuse its discretion in denying Mehl's motion.

{¶58} Mehl's sole assignment of error is overruled.

{¶59} The judgment of the Court of Common Pleas for Muskingum Couty, Ohio is affirmed. Costs are to be paid by the appellant David. E. Mehl.

By: Popham, J.

King, P.J. and

Montgomery, J., concur