

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

State of Ohio

Court of Appeals No. S-25-029

Appellee

Trial Court No. 23-CR-327

v.

Rochelle Work

DECISION AND JUDGMENT

Appellant

Decided: September 29, 2026

* * * * *

Beth Tischler, Sandusky County Prosecuting Attorney, and
Alexis M. Otero, Assistant Prosecuting Attorney, for appellee.

Joseph Sobecki, for appellant.

* * * * *

SULEK, J.

{¶ 1} Appellant Rochelle Work appeals the judgment of the Sandusky County Court of Common Pleas that convicted her of one count of misuse of credit cards. She argues that the trial court erred when it denied her pre-sentence

motion to withdraw her guilty plea. For the reasons that follow, the trial court's judgment is affirmed.

I. Factual Background and Procedural History

{¶ 2} On April 21, 2023, the Sandusky County Grand Jury indicted Work on one count of misuse of credit cards in violation of R.C. 2913.21(B)(2) and (D)(4), a felony of the fifth degree. Work allegedly used an elderly person's credit card to purchase candy and cigarettes totaling \$21.60. The matter proceeded in the regular course to a change of plea hearing on August 14, 2023.

{¶ 3} At the change of plea hearing, Work withdrew her initial plea of not guilty and entered a plea of guilty to the offense as charged in the indictment. In exchange for her guilty plea, the State agreed to Work being placed in a diversion program. Work was informed that if she successfully completed the diversion program through the probation department, her charge would be dismissed. If she failed to complete the diversion program, the trial court would find her guilty. The trial court further conducted a full Crim.R. 11 plea colloquy informing her of the nature of the offense and the possible penalties, the rights she was waiving, and that a guilty plea is a complete admission of guilt. The trial court found that Work's guilty plea was knowing, intelligent, and voluntary. It, however, refrained from finding her guilty pending her completion of the diversion program.

{¶ 4} On August 28, 2024, the State moved to terminate Work's diversion for failure to comply with its terms and conditions. Specifically, Work failed to report for scheduled office visits on September 19, 2023, December 14, 2023,

February 23, 2024, and June 3, 2024, failed to provide a drug screen on February 26, 2024, and March 25, 2024, and failed to provide a deliverable mailing address or accessible phone number. The trial court set the matter for a hearing on the motion to terminate diversion.

{¶ 5} On May 14, 2025, Work moved to withdraw her guilty plea. Work maintained that she was not guilty of the offense and only pleaded guilty because the State offered to recommend a diversion program in exchange for her plea.

{¶ 6} She asserted that the evidence would show that on or about September 8, 2022, R.W. lost his wallet and Work found it. Work did not have a prior relationship with R.W. She located R.W.'s phone number and left a voicemail informing R.W. that she had his wallet and he could call her to retrieve it. She maintained that a subpoena of phone records would prove the call was made.

{¶ 7} Work admitted that the evidence would also show that at 11:15 p.m. on September 8, 2022, she used R.W.'s debit card to buy two candies and two cigarettes for herself at Circle K in Sandusky County, Ohio. It is unclear if Work made the purchase before or after she contacted and left a voicemail for R.W.

{¶ 8} Within approximately 24 hours of Work leaving the voicemail for R.W., he returned her call. Work stated that she told R.W. that she (1) had his wallet, (2) had used his debit card, and (3) would like to return the wallet and pay him back for the use of his debit card. Before Work met R.W. to return the wallet, however, she was arrested. Work suggested that she may be able to prove that she

placed approximately \$20.00 to \$25.00 in his wallet at the time it was seized by the police.

{¶ 9} Work also alleged that R.W. has dementia, and it was R.W.'s daughter who contacted the police after learning that his wallet was missing.

{¶ 10} Work argued that her conversation with R.W. and the other circumstances of the transaction demonstrated that she did not use his debit card “with purpose to defraud.” She, therefore, argued that she was not guilty of the offense and urged the trial court to permit her to withdraw her guilty plea.

{¶ 11} The State opposed Work's motion, arguing that it would be prejudiced if the plea were withdrawn because the victim is now deceased and can offer no evidence to dispute Work's version of the events. Furthermore, the State disagreed with Work's argument that she lacked the requisite mental state to commit the offense in light of her admission to finding a wallet that did not belong to her and using a debit card in that wallet to purchase candy and cigarettes without the victim's knowledge or consent. The State characterized Work's request to withdraw her guilty plea as a mere “change of heart,” and requested that the trial court deny her motion.

{¶ 12} Work replied that the State's claim of prejudice was not persuasive because R.W. was always unavailable to testify due to his dementia, which existed at the time of the offense in September 2022. Work also argued that her motion to withdraw her guilty plea was not based on a change of heart but was entirely consistent with her belief that she was not guilty and only entered her plea to

secure dismissal of the charges through successful completion of the diversion program.

{¶ 13} The parties waived their right to a hearing on the motion to withdraw the guilty plea, and the trial court considered the motion on the briefs. The trial court found that Work knowingly, voluntarily, and intelligently entered her guilty plea with the advice of counsel. It also found that, although her motion asserted actual innocence and a lack of intent to defraud, her explanation that she used the victim's debit card without permission but intended to return the wallet and repay the amount is not newly discovered information. It thus believed that the motion was "motivated by a change in legal strategy due to the failure to complete diversion, rather than by a genuine change in factual understanding or legal basis." The trial court also found that allowing Work to withdraw her plea would materially prejudice the State because it could no longer call R.W. as a witness to rebut Work's narrative. Finally, the trial court found that Work's assertions that she did not have an intent to defraud were "largely uncorroborated and not supported by admissible evidence presently before the Court." The trial court, therefore, determined that Work failed to establish "a reasonable and legitimate basis to withdraw her guilty plea" and denied her motion.

{¶ 14} At sentencing, the trial court ordered Work to serve three years of community control.

II. Assignment of Error

{¶ 15} Work timely appeals her judgment of conviction, raising one assignment of error for review:

1. The trial court erred by denying Work's motion to withdraw her guilty plea based on actual innocence.

III. Analysis

{¶ 16} “The decision to grant or deny a presentence motion to withdraw a guilty plea is within the sound discretion of the trial court.” *State v. Xie*, 62 Ohio St.3d 521 (1992), paragraph two of the syllabus; *State v. Fisher*, 2025-Ohio-5821, ¶ 24 (6th Dist.). A trial court abuses its discretion when its decision is unreasonable, arbitrary, or unconscionable. *State v. Adams*, 62 Ohio St.2d 151, 157 (1980).

{¶ 17} Crim.R. 32.1 provides that “[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.” The rule distinguishes between presentence and postsentence motions to withdraw guilty pleas. Presentence motions to withdraw a guilty plea, like the one here, “should be freely and liberally granted.” *Xie* at 527. “Nevertheless, it must be recognized that a defendant does not have an absolute right to withdraw a plea prior to sentencing.” *Id.* “Therefore, the trial court must conduct a hearing to determine

whether there is a reasonable and legitimate basis for the withdrawal of the plea.”

Id.

{¶ 18} In considering whether to grant a presentence motion to withdraw a plea, Ohio courts consider nine factors:

(1) whether the state will be prejudiced by withdrawal; (2) the representation afforded to the defendant by counsel; (3) the extent of the Crim.R. 11 plea hearing; (4) the extent of the hearing on the motion to withdraw; (5) whether the trial court gave full and fair consideration to the motion; (6) whether the timing of the motion was reasonable; (7) the reasons for the motion; (8) whether the defendant understood the nature of the charges and potential sentences; and (9) whether the accused was perhaps not guilty or had a complete defense to the charge.

State v. Warren, 2024-Ohio-1072, ¶ 24 (6th Dist.), quoting *State v. Dellinger*, 2002-Ohio-4652, ¶ 18 (6th Dist.); *Fisher* at ¶ 26; *State v. Fish*, 104 Ohio App.3d 236, 240 (1st Dist. 1995). “This court has consistently recognized that ‘[a] mere change of heart is not a sufficient reason to permit withdrawal of a plea.’” *Fisher* at ¶ 42, quoting *State v. Gross*, 2022-Ohio-2434, ¶ 9 (6th Dist.).

{¶ 19} “These factors are part of a balancing test, and no one factor is conclusive.” *Fisher* at ¶ 27, quoting *Warren* at ¶ 25. “[T]he ultimate question to be answered by the trial court is ‘whether there is a reasonable and legitimate basis for the withdrawal of the plea,’ . . . and the ultimate question to be answered by the court of appeals is whether the trial court abused its discretion in making this determination.” *Id.*, quoting *Warren* at ¶ 25, quoting *State v. Hartman*, 2018-Ohio-4452, ¶ 14 (6th Dist.).

{¶ 20} Here, Work first argues that the trial court utilized the wrong standard when it denied her motion to withdraw her guilty plea. She contends that the trial court should not have performed the same analysis of the nine factors listed above as an appellate court would, but instead should have simply questioned whether she had a reasonable and legitimate basis for the withdrawal of the plea. This court disagrees. The listed factors are useful for determining whether a defendant has a reasonable and legitimate basis for the withdrawal of the plea. In considering those factors, the trial court satisfied its role and expressly found that she did not have such a reasonable and legitimate basis.

{¶ 21} The question that must be resolved now is whether the trial court abused its discretion in reaching its conclusion. Work argues that unsuccessfully completing diversion is a reasonable and legitimate basis for seeking to withdraw the guilty plea, and the trial court's denial was an abuse of discretion because (1) the State would not be prejudiced by the withdrawal, and (2) she was actually innocent of the crime.

{¶ 22} Upon review, the trial court's decision to deny Work's presentence motion to withdraw her guilty plea was not unreasonable, arbitrary, or unconscionable.

{¶ 23} At the outset, it is undisputed that at the initial change of plea hearing Work was represented by competent counsel, the trial court conducted a full Crim.R. 11 plea colloquy, and Work had a clear understanding of the nature of the charges and the potential penalties. It is also not contested that Work's motion

to withdraw her guilty plea was timely and that the trial court gave full and fair consideration to her motion.

{¶ 24} As to whether the State would be prejudiced by allowing Work to withdraw her guilty plea, the State identifies that R.W. would be unavailable to testify as a witness because he is now deceased. It further argues on appeal that his phone records would also be unavailable to rebut Work’s new assertions in support of her claimed innocence. Work responds that R.W. was always unavailable to testify due to the fact that he suffered from dementia at the time of the alleged crime, a fact which the State has not disputed. This court notes that there is no evidence in the record to support whether R.W. did indeed suffer from dementia. Nonetheless, even if R.W. had always been unavailable to testify, this court finds at least some prejudice to the State through no fault of its own in attempting to prosecute a case nearly two years after the original guilty plea. *See State v. Francis*, 2004-Ohio-6894, ¶ 40 (“The more time that passes between the defendant’s plea and the filing of the motion to withdraw it, the more probable it is that evidence will become stale and that witnesses will be unavailable.”).

{¶ 25} Of greater weight to this court, however, is that Work’s claimed reason for her motion—her professed innocence—lacks merit. Work pleaded guilty to misuse of credit cards in violation of R.C. 2913.21(B)(2), which provides, “No person, with purpose to defraud, shall . . . (2) Obtain property or services by the use of a credit card, in one or more transactions, knowing or having reasonable cause to believe that the card has expired or been revoked, or

was obtained, is retained, or is being used in violation of law.” In her motion, Work admitted that she found a credit card belonging to R.W. and used it without his advance knowledge or permission to buy candy and cigarettes. She claims, however, that she lacked “purpose to defraud.”

{¶ 26} R.C. 2901.22(A) states that a person acts purposely “when it is the person’s specific intention to cause a certain result, or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is the offender’s specific intention to engage in conduct of that nature.” “Defraud,” pursuant to R.C. 2913.01(B) means “to knowingly obtain, by deception, some benefit for oneself or another, or to knowingly cause, by deception, some detriment to another.”

{¶ 27} Here, notwithstanding Work’s assertion that she intended to pay R.W. back for her purchase, by her own admission she had a specific intention to use a credit card that she knew did not belong to her in order to knowingly obtain a benefit for herself by deceiving the store as to her authorization to use the credit card. Work, therefore, has admitted facts showing that she had a purpose to defraud, thereby undermining her claim of actual innocence.

{¶ 28} In sum, the trial court appropriately considered several factors in determining whether Work established a reasonable and legitimate basis to withdraw her guilty plea. The court concluded that she did not. Considering the above, this court holds that the trial court’s decision was not an abuse of discretion.

{¶ 29} Accordingly, Work’s assignment of error is not well-taken.

IV. Conclusion

{¶ 30} For the foregoing reasons, the judgment of the Sandusky County Court of Common Pleas is affirmed. Work is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Thomas J. Osowik, P.J.	JUDGE
Myron C. Duhart, J.	JUDGE
Charles E. Sulek, J. CONCUR.	JUDGE

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