[Cite as *State v. Jimenez-Zenquiz*, 2025-Ohio-1440.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellant,

v.

ABRAHAM ISAAC JIMENEZ-ZENQUIZ,

Defendant-Appellee.

OPINION AND JUDGMENT ENTRY
Case No. 24 MA 0089

Criminal Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 2022 CR 00685

BEFORE:
Cheryl L. Waite, Mark A. Hanni, Katelyn Dickey, Judges.

JUDGMENT:
Reversed.

Atty. Lynn Maro, Mahoning County Prosecutor, *Atty. Ralph M. Rivera* and *Atty. Kristie M. Weibling*, Assistant Prosecutors, for Plaintiff-Appellant

Atty. Mark J. Lavelle, for Defendant-Appellee

Dated: April 14, 2025

WAITE, J.

{¶1} Appellant State of Ohio appeals an October 1, 2024 judgment entry which granted Appellee Abraham Isaac Jimenez-Zenquiz's postsentence motion to withdraw his guilty plea. Procedurally, the state argues that the arguments raised in Appellee's motion are barred by *res judicata* and even if the motion had raised an arguable claim, the trial court was required to hold an evidentiary hearing before granting such motion. Substantively, the state contends that Appellee has failed to offer any facts that were unknown at the time of trial and raises a speculative defense, at best. For the reasons provided, the state's arguments have merit and the judgment of the trial court is reversed.

Factual and Procedural History

{¶2} On November 5, 2022, Father picked up his three children (aged ten, nine, and four) from their mother's house in Pittsburgh, Pennsylvania and was en route to his residence in the Youngstown area. He drove a passenger van owned by his employer, a transportation and limousine company. Father's friend, R.M., accompanied him on the trip. When they arrived in town, Father stopped at a convenience store to get breakfast for everyone. R.M. initially stayed inside the van with the engine running because the children were asleep. At some point, however, R.M. left the van to talk to someone outside of the store. He noticed Father gesture towards a refrigerator containing drinks, and leaned his head into the convenience store to tell Father his drink order. When R.M. turned around, the van carrying the children was gone.

{¶3} Father called the children's mother and she was able to track the children's location through their phone. Father provided this information to police. A nearby good Samaritan saw the incident and offered his assistance, driving Father and R.M. to that

location. When Father exited the man's car, he saw Appellee walking with the children through an open field located on a "circle wooded area." According to police, Father, and R.M., the location was near a residential area but was "the remote area at the end of the street." (Preliminary Hrg Tr., p. 26.)

{¶4} Police arrived at the location around the same time as Father. When the children noticed the arrival of their father, they ran to him while police officers detained Appellee. At first, Appellee denied that he had been inside the van, however, each of the three children told police that Appellee had been driving the van and is the individual who woke them up and made them exit the vehicle. The children also said that Appellee encouraged them to lie to police and tell them someone else, a black man, had been driving the van.

{¶5} On December 1, 2022, Appellee was indicted on three counts of kidnapping, felonies of the first degree in violation of R.C. 2905.01(A)(2), (C) and one count of grand theft of a motor vehicle, a felony of the fourth degree in violation of R.C. 2913.02(A)(1), (B)(5).

{¶6} On February 16, 2023, Appellee pleaded guilty to one count of kidnapping and grand theft of a motor vehicle. The remaining two counts of kidnapping were dismissed. On March 22, 2023, the court imposed the following sentence: an indefinite term of five to seven and one-half years of incarceration for kidnapping to run concurrently to an eighteen-month term for grand theft. The court granted Appellee 136 days of credit. The court also imposed a mandatory postrelease control term of two to five years.

{¶7} On January 12, 2024, Appellee filed a *pro se* motion for judicial release. On January 30, 2024, the trial court denied the motion, finding that Appellee was not yet eligible.

{¶8} On February 20, 2024, this time through counsel, Appellee filed a motion to withdraw his guilty plea, arguing that he had a viable defense that his trial counsel failed to pursue. Appellee admitted to stealing the van but claimed as a defense that he had no knowledge the children were inside. Once he noticed the children, he stopped to take them to his aunt's house so that she could call police and care for the children until they were retrieved. We note that Appellee did not produce affidavits or other evidence to corroborate this story nor did he file an affidavit himself attesting to these facts, which are notably different than those he told police at the time of the incident.

{¶9} Appellee filed a motion to have a transcript of his preliminary hearing be prepared, which the court granted. Before this transcript was filed, on August 16, 2024, the court sustained Appellee's motion to withdraw his plea. The transcript was not filed until one and one-half months after the trial court's decision. Thus, while the transcript was used to develop the factual background in this appeal, it may not have been relied on by the trial court when it rendered its decision.

{¶10} On November 7, 2024, we granted the state's motion for leave to appeal the trial court's order granting Appellee's motion to withdraw his plea.

ASSIGNMENT OF ERROR NO. 1

> Appellee's motion was barred by res judicata, and therefore the trial court was without jurisdiction to grant or even entertain the same.

ASSIGNMENT OF ERROR NO. 2

The trial court abused its discretion in granting Appellee's motion as it did not first hold an evidentiary hearing as required by law.

ASSIGNMENT OF ERROR NO. 3

The trial court abused its discretion in granting Appellee's post-sentence motion to withdraw his guilty plea as Appellee did not prove a "manifest injustice" due to the arguments therein being based on assumptions made in the best light of Appellee.

{¶11} Our analysis begins with the relevant law, Crim.R. 32.1, which outlines the procedures for a motion to withdraw a guilty plea: "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} As the state's arguments have some overlap, they will be addressed together. The state challenges the trial court's decision on both procedural and substantive grounds. However, these arguments all center on the lack of new evidence. On the issue of *res judicata*, the state argues that as all the evidence on which Appellee's motion was based was previously known to Appellee, who failed to file a direct appeal of his conviction, failure to raise any new evidence in this case is fatal to his motion. His claim is barred by *res judicata*. The state posits that Appellee's claimed defense, that he had no knowledge the children were inside the vehicle when he took it, could and should

have been raised on direct appeal. Instead, Appellee waited over one year after his sentencing, and less than one month after a failed motion seeking judicial release, to raise this alleged defense.

{¶13} The state contends that even if Appellee's motion was not barred by *res judicata*, the failure of the trial court to hold an evidentiary hearing before granting the motion was error. The state argues that the court's failure to hold a hearing underscores the fact that there was no new evidence offered in this matter. This leads to the state's third argument, that none of the evidence on the record supports Appellee's contention that he suffered a manifest injustice when the trial court accepted the plea.

{¶14} Appellee responds by arguing that *res judicata* does not apply where ineffective assistance of counsel and manifest injustice are involved. Appellee cites no legal precedent for this proposition. As to the failure to first hold a hearing, Appellee asserts that the state had the opportunity to rebut his claims through briefing, so a full hearing was unnecessary. At appellate oral argument, Appellee's counsel conceded that no new evidence exists, hence he contends there was no point in holding an evidentiary hearing on the matter. Appellee also asserts that an evidentiary hearing is not required where the record demonstrates a manifest injustice occurred. Appellee argues that he raised in his motion that he had a viable defense his counsel failed to pursue. While he concedes that he committed the offense of grand theft, as a defense to kidnapping he claims that he did not know children were inside the vehicle and was in the process of returning them to safety when police intervened. Hence, these facts show his guilty plea to kidnapping resulted in manifest injustice, as he was not guilty of that offense.

{¶15} Beginning with the issue of *res judicata,* the Ohio Supreme Court has held that where a criminal defendant offers no new evidence that was not known or available at the time his or her plea was entered to support the claim that manifest injustice occurred, the defendant cannot be found to have suffered any prejudice. *State v. Straley,* 2019-Ohio-5206. The appellant in *Straley* sought to withdraw his plea eight years after sentencing, arguing that the trial court misstated the law and informed him that it was "legally possible" for him to receive a community control term although "it's not going to happen in this case." *Id.* at ¶ 17. The *Straley* Court held that the appellant's argument was barred by *res judicata* because he could have raised this argument on direct appeal, but failed to do so. *Id.* at ¶ 23.

{¶16} The timing of Appellee's motion and his asserted defense are similar to that in *State v. Kopnotsky,* 2019-Ohio-5066 (7th Dist.). Although not cited by the parties, *Kopnotsky* involves very similar facts. Among the multiple arguments raised, the appellant sought to withdraw his plea one year after his sentencing, claiming that he was innocent. *Id.* at ¶ 22. In rejecting this argument, we emphasized that "[n]o new evidence was cited as to the elements of the offense or any defense. Undue delay between the motion and the reason for withdrawal negatively affects credibility and militates against allowing plea withdrawal." *Id.*, citing *State v. Smith*, 49 Ohio St.2d 261, 264 (1977).

{¶17} Similarly, we held that a one and one-half year delay in filing a motion to withdraw a plea weighed against the appellant where the supporting facts would have been apparent to the appellant during the underlying proceedings. *State v. Snyder,* 2009-Ohio-4813, ¶ 52 (7th Dist.).

{¶18} Here, the facts leading to Appellee's defense were clearly available to him at the time of his plea and sentencing. His new "defense" is entirely comprised of facts that were not only known to Appellee, but were exclusively known to him, as they center on his intentions and his claimed rationale for driving the children to a field and forcing them out of the van, where they were discovered and police intervened.

{¶19} Appellee concedes that he had no new evidence to negate an element of the offense or otherwise support his alleged defense. Instead, Appellee claims that he was prevented from raising his defense because counsel failed to tell him that these facts could give rise to a defense. Hence, Appellee claims he did not know that his "defense" could have been raised at trial. There are two problems with Appellee's contentions. First, he originally told police that he was never inside the van. It was the children who informed police that he was not only the driver, but had encouraged them to lie to police and say that someone else drove the van. Second, there is no reason why Appellee could not have taken steps to learn of and address this issue at an earlier time. Appellee has offered no explanation as to why he suddenly learned that he had a defense that could have been raised at trial. Likewise, Appellee never pursued an appeal of his conviction at any time. We note that he was able to obtain new counsel to address the issue in his very belated motion to withdraw. It is unclear whether his new counsel was retained, however, there is no entry appointing counsel. In any event, as we have several times observed, the lengthy delay in filing this motion raises credibility issues with his unsupported claims.

{¶20} In a case before the Ohio Supreme Court, the appellant filed a motion to withdraw his plea based on several arguments, including ineffective assistance of counsel

and manifest injustice. *State v. Ketterer*, 2010-Ohio-3831. The *Ketterer* Court explained that "Ohio courts of appeals have applied *res judicata* to bar the assertion of claims in a motion to withdraw a guilty plea that were or could have been raised at trial or on appeal." *Id*. at ¶ 59, citing *State v. McGee*, 2009-Ohio-3374, ¶ 9 (8th Dist.); *State v. Totten*, 2005-Ohio-6210, ¶ 7 (10th Dist.). While the Court's holding did not specifically state that a postsentence motion to withdraw a plea must be based on new evidence to avoid *res judicata*, *Ketterer* clearly contradicts Appellee's argument that the requirement to raise new evidence does not apply to arguments grounded in ineffective assistance of counsel and manifest injustice. While the appellant in *Ketterer* filed a direct appeal and Appellee in the instant matter did not, *res judicata* applies not only to bar arguments that were raised in a direct appeal, but also those that could have been raised on direct appeal. The record, here, reflects nothing that would have prevented Appellee from filing a direct appeal and raising his claims earlier, as the facts on which Appellee bases these claims were known to Appellee at the time of his plea. Appellee failed to exercise his right to a direct appeal of this matter based on the original facts and has failed to support his allegations of manifest injustice with any new facts. As such, the state is correct: the arguments raised by Appellee in his motion are barred by *res judicata*, and the trial court erred in granting his motion.

{¶21} Even if Appellee's motion had raised some arguable, relevant claims, here, the trial court was required to hold a hearing before granting the motion to withdraw a postsentence plea. Pursuant to Ohio law, whether an evidentiary hearing is required on a postsentence motion to withdraw a guilty plea depends on whether the defendant has

met his initial burden to provide a set of facts that, if true, would require the trial court to grant the motion:

> It has been explained that "an evidentiary hearing is required if the facts alleged by a defendant, accepted as true, would require the trial court to grant the motion. However, if the record, on its face, conclusively and irrefutably contradicts a defendant's allegations in support of his Crim.R. 32.1 motion, an evidentiary hearing is not required." [*State v. Borecky*, 2008-Ohio-3890, ¶ 30 (11th Dist.).]

State v. Trachman, 2013-Ohio-4409, ¶ 28 (7th Dist.). In other words, the threshold test in any determination regarding a postsentence motion to withdraw a plea first places a burden on the defendant to provide facts that, if true, would require the court to grant the motion. If that burden is met, the trial court must hold an evidentiary hearing which tests the veracity of those facts, based on the presentation of evidence. Only in those cases where it is apparent from the record that a defendant has failed to meet his or her initial burden and there is clearly nothing to support defendant's claims may a trial court rule on the issue without hearing and dismiss the defendant's motion. In all cases where there may be support for the motion, a hearing is mandated.

{¶22} Recently, the Third District reviewed a similar state's appeal where the trial court granted a post-sentence motion to withdraw a plea without first holding an evidentiary hearing. *State v. Evans,* 2024-Ohio-2679 (3d Dist.). In holding the trial court erred, the *Evans* court explained:

> When taken as a whole, the legal authority relating to Crim.R. 32.1 motions outlined above rather clearly supports the proposition that a hearing must be held before a post-sentence motion to withdraw a guilty plea may be granted. In the absence of a hearing on a post-sentence Crim.R. 32.1 motion before the same is granted, a trial court has no evidentiary foundation upon which to base a decision that a defendant established the requisite manifest injustice, the state has no opportunity to present any evidence to rebut the defendant's claims, and a reviewing court has no record to consider in assessing any claim of error made on appeal with regard to the trial court's decision.

Id. at ¶ 24.

{¶23} Here, despite Appellee's claim that a hearing was not required because manifest injustice is apparent, Appellee's stance contradicts the standard articulated in *Trachman* and *Evans.* The court's decision in this matter to forgo the evidentiary hearing also directly contradicts these principles. The allegation that there are facts to support a finding of manifest injustice must still be supported by evidence. Without an evidentiary hearing on the allegations, it would be impossible to determine whether a manifest injustice exists. Again, it is apparent that Appellee's motion is barred by *res judicata*, and should have been summarily dismissed. Assuming arguendo that Appellee had raised allegations that, if true, would validly support plea withdrawal, however, the trial court was required to hold an evidentiary hearing and failure to do so was also error.

{¶24} While the trial court's decision may be reversed solely on either of the procedural grounds, the state is also correct as to its substantive argument regarding

Appellee's claim of manifest injustice. As the state appropriately notes, it is unclear on what evidence the court relied in granting the motion, as the judgment entry is summary in nature and neither party offered any evidence, only written briefs. Again, the transcript of Appellee's preliminary hearing may not have been relied on by the trial court when it rendered its decision.

{¶25} As previously addressed, because Appellee filed his motion to withdraw his guilty plea after the trial court imposed sentence, he was required to demonstrate a manifest injustice occurred in accepting his guilty plea.

> Under the manifest injustice standard, a post-sentence motion to withdraw a plea is allowed only in extraordinary cases. *Id*. at 264. "The standard rests upon practical considerations important to the proper administration of justice, and seeks to avoid the possibility of a defendant pleading guilty to test the weight of potential punishment."

*Trachm*an at ¶ 10, citing *Kadwell v. United States*, 315 F.2d 667, 670 (9th Cir.1963).

{¶26} A review of Appellee's "defense" reveals it is both speculative and unlikely. When police arrived, they saw Appellee and the children walking through what is described as an "open field." While the area cannot be called "wilderness," it was described as somewhat remote.

{¶27} Police discovered the van Appellee had admittedly stolen hidden by brush and trees. The children told officers that Appellee had instructed them to lie and say that someone else had been driving the van. However, they clearly conveyed to officers that Appellee took and drove the vehicle, woke them up, and took them out of the van once it

stopped. Appellee claims that he first discovered the children in the vehicle only after he drove off, and had no knowledge that they were in the van until after he left the parking lot. He claimed he stopped in the field so that he could take the girls to his aunt's house, and claimed he intended to ask his aunt to call police and arrange the children's return to their family, and the aunt was to care for them until police could arrive.

{¶28} There are several problems with Appellee's story. First, Appellee and the children were found walking in an open field where no houses are located. Second, Appellee never produced this aunt. If she exists, she never gave a statement or testimony to corroborate Appellee's story. This record shows that at best, Appellee may have been truthful about his intentions regarding the children and parked in the field to avoid anyone seeing the van, but provided absolutely no evidence to support this claim. At worst, he lied about taking the children to his aunt's house and intended to either harm them or leave them in the field, unattended and alone.

{¶29} Regardless, even assuming Appellee's claim is true and he did not know the children were inside the van when he drove off, the record reveals he committed all the elements of the crime of kidnapping. Appellant pleaded guilty to kidnapping pursuant to R.C. 2905.01(A)(2), which provides:

> (A) No person, by force, threat, or deception, or, in the case of a victim under the age of thirteen or mentally incompetent, by any means, shall remove another from the place where the other person is found or restrain the liberty of the other person, for any of the following purposes:
>
> (2) To facilitate the commission of any felony or flight thereafter[.]

{¶30} Assuming Appellee did not intentionally remove the children from the parking lot he took them from, he made no attempt to return them to their prior location or deliver them to a police station. While he frames his actions as taking the children to "safety," there is no question that he removed the children from the van to further his completion of the crime of grand theft (a felony) and avoid apprehension. While there are circumstances where a defendant acts unknowingly but his or her later actions defeat an element of the crime, Appellee's admitted purpose of taking the children to another location only to avoid apprehension and complete his theft is evidence of all of the elements of kidnapping. While only one of the requirements of R.C. 2905.01(A)(2) must be met (to facilitate the commission of any felony or flight thereafter), the record reveals both are met, here. It is apparent that Appellee's allegations, even if construed as true, do not form a defense.

{¶31} Even so, we recently addressed the legal requirements where a bona fide defense could have been raised but the defendant instead entered a guilty plea. *State v. Unger*, 2023-Ohio-3334 (7th Dist.). In *Unger*, we reiterated the long-standing law in Ohio that where a defendant seeks to withdraw a plea based on a theory of ineffective assistance of counsel, that "defendant must demonstrate that counsel's performance was deficient and that he was prejudiced by the deficiency, i.e., a reasonable probability that he would not have agreed to plead guilty but for counsel's deficiency." *Id*. at ¶ 25, citing *Straley* at ¶ 11; *State v. Xie*, 62 Ohio St.3d 521, 524 (1992). Although an alleged defense may not have specifically been at issue in *Unger*, we cited United States Supreme Court caselaw providing that "even when there is a bona fide defense, counsel may still advise his client to plead guilty if that advice falls within the range of reasonable competence

under the circumstances." *Id*. at ¶ 15, citing *United States v. Cronic*, 466 U.S. 648, fn. 19, 21 (1984).

{¶32} Hence, even if Appellee possessed a valid defense prior to entering his guilty plea, the plea may have been part of a strategic effort to limit his sentence. Appellee faced a maximum penalty of an indefinite term of eleven to sixteen and one-half years on each of the three kidnapping charges and eighteen months on the grand theft charge. If the court ordered the sentences to run consecutively, the maximum aggregate total would have been thirty-four and one-half years to fifty-one years of incarceration. Appellee was sentenced to five to seven and one-half years (a concurrent sentence). As previously discussed, his allegation that he had a defense to the kidnapping charges falls short. Even if his defense was viable, it is questionable whether a jury would have acquitted him on those charges. Thus, proceeding to trial placed him at great risk of a lengthy sentence, a risk he avoided by pleading guilty as per counsel's advice. It is apparent Appellee's arguments in this regard also fail, and Appellee was not entitled to have his motion to withdraw his plea granted in any respect. As such, each of the state's three assignments of error has merit and are sustained.

Conclusion

{¶33} The state raises both procedural and substantive arguments. Procedurally, the state contends the arguments raised in Appellee's motion are barred by *res judicata*, and that even if they were not, the trial court was required to hold an evidentiary hearing before granting such motion. Substantively, the state contends that Appellee has not offered facts that were unknown at the time of trial and raises a speculative defense, at

best. For the reasons provided, the state's arguments have merit and the judgment of the trial court is reversed.

Hanni, J. concurs.

Dickey, J. concurs.

For the reasons stated in the Opinion rendered herein, Appellant's assignments of error are sustained and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is reversed. Costs to be taxed against the Appellee.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.