

[Cite as *State v. Young*, 2017-Ohio-5579.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104861

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MICHAEL P. YOUNG

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-12-565605-A

BEFORE: Keough, A.J., Kilbane, J., and McCormack, J.

RELEASED AND JOURNALIZED: June 29, 2017

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KATHLEEN ANN KEOUGH, A.J.:

{¶1} Defendant-appellant, Michael P. Young, appeals from the trial court's judgment denying his postsentence motion to withdraw his guilty plea. Finding no merit to the appeal, we affirm.

I. Facts and Procedural History

{¶2} In August 2012, Young was charged in a 66-count indictment. The charges stemmed

from an alert received by the Internet Crimes Against Children Task Force ("ICAC") that a computer was making three files available for download that included videos of prepubescent females engaging in sexual acts. Following a thorough investigation, the ICAC determined that the computer was located at Young's residence. The ICAC executed a search warrant on Young's residence and, upon execution, discovered a locked safe contained in a locked room. The safe contained a camera and various media storage devices, hard drives, and flash drives that contained multiple images and videos of child pornography, some of which included hard core pornography titles. The investigation revealed that the camera had been placed in a boot box in the master bathroom that was used to videotape Young's girlfriend's 17-year-old daughter in the shower and in various stages of undress. The ICAC also discovered computer equipment and weapons in the locked room.

State v. Young, 8th Dist. Cuyahoga No. 99483, 2013-Ohio-5425, ¶ 4.

{¶3} Young subsequently pleaded guilty to three counts of pandering sexually oriented matter involving a minor, second-degree felonies; 38 counts of pandering sexually oriented matter involving a minor, second-degree felonies; four counts of illegal use of a minor in nudity oriented material or performance, second-degree felonies; four counts of voyeurism, fifth-degree felonies; and one count of possessing criminal tools, a

fifth-degree felony. All of the counts included a forfeiture specification. Pursuant to the plea agreement, the state dismissed 15 counts of pandering sexually oriented matter involving a minor, as well as Cuyahoga C.P. No. CR-12-563589, a case involving 20 counts of similar charges. *Id.* at ¶ 2.

{¶4} The trial court sentenced Young to a prison term of 21 years and 11 months. Young appealed his sentence, and this court affirmed on appeal. With regard to the length of his sentence, this court found that Young’s sentence was not “outside the mainstream of judicial practice” because it was consistent with sentences imposed for similar crimes committed by similar offenders, and that in imposing the sentence, the trial court had thoroughly considered the facts and circumstances unique to Young. *Id.* at ¶ 25.

{¶5} In June 2016, Young filed a motion to vacate his guilty plea. The trial court denied the motion without a hearing, and this appeal followed.

II. Law and Analysis

A. Ineffective Assistance of Counsel

{¶6} In his first assignment of error, Young argues that he was denied effective assistance of counsel regarding his guilty plea and sentencing. He contends that counsel advised him to enter the guilty plea, but did not tell him that his sentence could be “anything close” to the nearly 22 years he received. He further contends that counsel failed to effectively present mitigation evidence to reduce the severity of the sentence, and evidence regarding comparable sentences for similar offenders.

{¶7} Young’s arguments are barred by res judicata. Under the doctrine of res judicata, “a final judgment of conviction bars the convicted defendant from raising and litigating in any proceedings, except an appeal from that judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant at the trial that resulted in that judgment of conviction or on an appeal from that judgment.” *State v. Padgett*, 8th Dist. Cuyahoga No. 95065, 2011-Ohio-1927, ¶ 8, citing *State v. Perry*, 10 Ohio St.2d 175, 180, 226 N.E.2d 104 (1967). Young could have raised any argument regarding ineffective assistance of counsel relating to his plea and the length of his sentence in his direct appeal. Because he did not do so, his ineffective assistance of counsel claim is now barred by res judicata; the first assignment of error is therefore overruled.

{¶8} In his second assignment of error, Young contends that the trial court erred in denying his postsentence motion to withdraw his guilty plea because the evidence he submitted with his motion established a manifest injustice.

{¶9} Crim.R. 32.1 permits a motion to withdraw a guilty plea “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 manifest injustice has been defined as a “clear or openly unjust act.” *State ex rel. Schneider v. Kreiner*, 83 Ohio St.3d 203, 208, 699 N.E.2d 83 (1998). The burden of establishing manifest injustice is upon the individual seeking to vacate the plea. *State v. Smith*, 49 Ohio St.2d 261, 361 N.E.2d 1324 (1977), paragraph one of the syllabus. A

postsentence motion to vacate a plea is only permitted in extraordinary cases. *State v. Williams*, 8th Dist. Cuyahoga No. 88737, 2007-Ohio-5073, ¶ 29, citing *State v. Peterseim*, 68 Ohio App.2d 211, 213, 428 N.E.2d 863 (8th Dist.1980). Otherwise, a defendant would be encouraged to “test the weight of potential punishment” and withdraw his plea if the sentence were unexpectedly severe. *Id.*

{¶10} This court’s review of a trial court’s denial of a postsentence motion to withdraw a guilty plea is limited to a determination of whether the trial court abused its discretion. *State v. Kongkeo*, 8th Dist. Cuyahoga No. 96691, 2012-Ohio-356, ¶ 2, citing *State v. Xie*, 62 Ohio St.3d 521, 527, 584 N.E.2d 715 (1992). “Unless it is shown that the trial court acted unjustly or unfairly, there is no abuse of discretion. * * * One who enters a guilty plea has no right to withdraw it. It is within the sound discretion of the trial court to determine what circumstances justify granting such a motion.” *Williams* at ¶ 28, quoting *Peterseim* at 214.

{¶11} Young contends that his nearly 22-year sentence was “wildly excessive” when compared to that of similar offenders, and that it failed to account for mitigation evidence that was not presented due to counsel’s lack of diligence. He further contends that the sentence “well-exceeded” what his lawyer told him it was likely to be when he decided to enter a guilty plea, and if he had known he would be in prison for most of the rest of his life, he would have taken the matter to trial. Accordingly, he asserts that allowing the plea to stand amounts to a manifest injustice. We disagree.

{¶12} First, this court already determined on Young’s direct appeal that his sentence is neither “outside the ‘mainstream of judicial practice’ or so extreme that it is grossly disproportionate to the crimes to which Young pleaded guilty.” *Young*, 8th Dist. Cuyahoga No. 99483, 2013-Ohio-5425 at ¶ 25. This court also determined that the trial court considered mitigating factors when it imposed the sentence, stating, “the record reflects that the court considered the fact that Young is a first-time offender, he has a family to support, and he is receiving counseling.” *Id.* at ¶ 30. This court concluded that in sentencing Young to nearly 22 years in prison, the trial court “properly balanced these factors with the abuse, victimization, and revictimization endured by young children, including his own girlfriend’s daughter, at the hands of Young.” *Id.* Thus, Young’s arguments that his sentence was “wildly excessive” and imposed without any consideration of mitigating factors are without merit.

{¶13} With respect to Young’s argument that allowing the plea to stand would be a manifest injustice because the length of sentence exceeded what his lawyer told him it was likely to be, we find that Young has failed to demonstrate a manifest injustice. This court has repeatedly held that a lawyer’s mistaken prediction about the likelihood of a particular outcome is insufficient to demonstrate ineffective assistance of counsel. *State v. Simmons*, 8th Dist. Cuyahoga No. 91062, 2009-Ohio-2028; *State v. Bari*, 8th Dist. Cuyahoga No. 90370, 2008-Ohio-3663; *Williams*, 8th Dist. Cuyahoga No. 88737, 2007-Ohio-5073.

{¶14} Counsel's affidavit attached to Young's motion to withdraw his plea demonstrates that although counsel's prediction about the length of sentence the trial court would likely impose was wrong, it was his professional opinion based on his research, experience, and a conversation with the prosecutor. Further, counsel's affidavit states that when he and the prosecutor discussed resolution by way of a guilty plea, they contemplated a sentence in the range of 10 to 15 years, and counsel conveyed this information to Young. Therefore, although Young may not have been aware that he would be sentenced to 22 years in prison, he was aware that he faced a significant prison sentence. That he received a harsher penalty than expected is not grounds to grant a motion to withdraw. *State v. Vinson*, 8th Dist. Cuyahoga No. 103329, 2016-Ohio-7604, ¶ 44.

{¶15} Furthermore, the record reflects that in accepting Young's guilty plea, the trial court advised him of the potential penalties he faced, which Young stated he understood. Young also told the trial judge that no promises or threats had been made to induce his plea.

{¶16} In short, Young's claim that he would not have pleaded guilty and insisted on going to trial but for counsel's erroneous prediction is simply not credible. The evidence of his guilt was overwhelming and undisputed, and he faced a maximum sentence of 455 years. In exchange for Young's plea, the state dismissed 15 second-degree felony charges, reducing his prison exposure by 112 years. This was a distinct benefit to Young that he would not have realized had he gone to trial.

{¶17} The facts alleged by Young, supported by the affidavits attached to his motion, demonstrate only that counsel offered his professional opinion that the judge would impose a shorter sentence than Young ultimately received. That is not sufficient grounds to require the trial court to permit Young to withdraw his plea and, accordingly, the trial court did not abuse its discretion in denying the motion. The second assignment of error is overruled.

{¶18} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KATHLEEN ANN KEOUGH, ADMINISTRATIVE JUDGE

MARY EILEEN KILBANE, J., and
TIM McCORMACK, J., CONCUR