

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	
v.	:	No. 115911
JOSE ANAYA, JR.,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED

RELEASED AND JOURNALIZED: August 20, 2026

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-23-686051-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Megan Helton, Assistant Prosecuting Attorney, *for appellee*.

Wegman Hessler Valore and Matthew O. Williams, *for appellant*.

TIMOTHY W. CLARY, J.:

{¶ 1} Defendant-appellant Jose Anaya, Jr. (“Anaya”) appeals from the trial court’s denial of his presentence motion to withdraw his guilty plea. For the following reasons, we affirm.

I. Factual and Procedural History

{¶ 2} On October 24, 2023, a Cuyahoga County Grand Jury indicted Anaya on four counts of rape in violation of R.C. 2907.02(A)(1)(b) in the underlying case. Each count included a furthermore clause specifying that the victim was under ten years old at the time of the offenses. Anaya originally pleaded not guilty to these charges.

{¶ 3} On December 19, 2023, the court held a change-of-plea hearing in the underlying case. The State informed the court that it had reached a plea agreement with Anaya wherein Anaya would plead guilty to two amended counts of rape in violation of R.C. 2907.02(A)(2) and one amended count of gross sexual imposition in violation of R.C. 2907.05(A)(4). In exchange for Anaya's guilty plea, the State would dismiss the remaining count. The court engaged Anaya in a Crim.R. 11 colloquy, informed him of the registration requirements as a Tier 3 sexual offender and that he would be subject to mandatory postrelease control, and then accepted his guilty pleas as described above. The court referred Anaya for the preparation of a presentence-investigation report and a mitigation-of-penalty report and continued the matter for sentencing.

{¶ 4} On February 2, 2024, the court held a sentencing hearing in both the underlying case — Cuyahoga C.P. No. CR-23-686051-A — and a separate criminal case — Cuyahoga C.P. No. CR-22-673293-A (“the weapons case”). Anaya was represented by counsel in both cases, and both attorneys were present for the sentencing hearing. Anaya's attorney in the underlying case (“defense attorney 1”)

addressed the court at the outset of the sentencing hearing, and the following exchange took place:

[DEFENSE ATTORNEY 1:] Your Honor, I just spoke with Mr. Anaya regarding the case that I have him on, the 051 case, and he advises that he has retained counsel to vacate his plea. I'm not certain where counsel is. I was aware Mr. Anaya had been searching for somebody who would do that. I certainly couldn't do it because I was the lawyer that took the plea with him so I didn't have the capability legally to move to vacate it. So Mr. Anaya would not like to go to sentencing. He is waiting for his lawyer to arrive to file a proper motion. Thank you.

THE COURT: Well, check the docket, see if anything is filed on the docket. I don't have anything before the court. You know, this matter has been set for a while now; right? Took the plea back in December, there was plenty of time if he wanted to go ahead and vacate his plea he could have at least requested the court of that. Does the State of Ohio have an opinion on that?

[ASSISTANT PROSECUTING ATTORNEY:] Judge, we ask you deny the request for continuance. I don't know if he is making a formal motion right now to withdraw his plea or if he is making a motion to continue this sentencing hearing to withdraw his plea at a later date; however, the court is correct, we took this plea, I believe it was December 12th. He's had over six weeks to have counsel file a notice of appearance and file any motion he wanted to. Now the day of sentencing — the sentencing even got continued for about three weeks. So he's had plenty of time and the state is asking that we go forward with the sentencing hearing today.

THE COURT: Okay. Great. So the request that you made is denied. I don't know exactly how you want to frame it for the purposes of the record as a continuance or oral motion to vacate the plea. What's your theory guys? Just get it in the record. That's all.

(Tr. 25-26.)

{¶ 5} At that point, Anaya's counsel in the weapons case ("defense attorney 2"), addressed the court and the following exchange took place:

[DEFENSE ATTORNEY 2:] Your Honor, I'm his attorney on the other case.

THE COURT: On the weapons with disability case?

[DEFENSE ATTORNEY 2:] He's not going to make a motion to vacate that one; however, I will file a motion on his behalf orally to vacate his other plea. He reached out to my office several times.

THE COURT: You are making a motion on [defense attorney 1's] case to go ahead and do that?

[DEFENSE ATTORNEY 2:] Yes, your Honor.

THE COURT: So are you the person that's going to get retained; is that the thought process?

ANAYA: Yes.

THE COURT: It's a little late.

ANAYA: I understand. Like my — your Honor, my communications is just like it's been hard because of funds, first of all, you know, and calling inmate debit and collect is hard to reach a law firms and stuff like that. I want to prove my actual innocence, and you know, for the purpose of — for the purpose of, you know, manifesting injustice, your Honor.

THE COURT: Well, I hear the —

ANAYA: That's the reason —

THE COURT: I hear some of the magic words you are using. I don't think those words really apply here, okay. This isn't like — this is a negotiated plea that you took here back in December was something that was quite beneficial to you based upon the evidence that was talked about during that plea. Let me just look at the rule here for a second please.

So the first thing for the record I've gone here to Criminal Rule 11 just to see about the effect of we're taking this plea right here. And I'm reviewing the section C of the rule, again, Rule 11.

I would indicate to the parties honestly I'm somewhat aghast that this would happen that you would do this to me in court here today. I don't

understand it — I’m talking right now, not you, all right, is that this case has been hanging around — when I say hanging around we’re getting information done that was requested by [defense attorney 1] on behalf of Anaya. We got that. And we’re now going to sentencing. The record should reflect about half hour, 35 minutes ago I walked through the courtroom to go over to see Mike Shaughnessy across the hallway, had a brief conversation with [defense attorney 2], said hello, and blah, blah, you know, just small talk. And there was nothing like, oh, we need to talk to you before we come out on the record here today. There’s three cases on this case right here. One was dismissed and re-filed. Let me see if I have that case right here. 677509. Print that docket out in these two cases right here and we’ll be in recess for about five minutes and we’ll come back on the record, okay?

(Tr. 26-29.)

{¶ 6} Following a brief recess, the trial court went back on the record and stated that it was taking judicial notice that 21 pretrial hearings took place both in the underlying case and the weapons case. The court then stated that it was “convert[ing] over” to a motion to vacate the plea and asked defense attorney 2 what the rationale for the motion was.

{¶ 7} Defense attorney 2 addressed the court and stated that his office had been contacted by Anaya and members of Anaya’s family and declined to represent him related to his motion to withdraw his plea and that was the last he had heard from Anaya until the outset of the sentencing hearing. Defense attorney 2 stated that Anaya “pled to me to make a motion on behalf of his attorney who is not here and I went ahead and did that.” (Tr. 31.) When the court inquired as to evidence that supported the motion, defense attorney 2 stated that he was not privy to any evidence. The court then directly addressed Anaya and the State of Ohio and inquired as follows:

THE COURT: Is there anything you want to put on, Mr. Anaya, since you don't have a lawyer here right now for the purposes of the — for the purposes of a new trial? Hold on here. I'm just trying to make sure I'm doing the right thing.

So you are represented by two different lawyers in two different cases.

Well, I'm going to take it that there's no lawyer here and that there hasn't been a motion before the court to vacate the plea and we're going to go forward with sentencing. That will solve that question.

State of Ohio have any presentation for the court?

First of all, before we transition over that, does the State of Ohio have anything it wants to have on the record regarding the defendant's motion to vacate his plea?

(Tr. 32.)

{¶ 8} Anaya addressed the court and presented arguments in support of his motion to withdraw his guilty plea. He referenced a summary report of DNA evidence that defense attorney 1 prepared for him and stated that it was insufficient because it did not have a doctor's or scientist's name on the report or any information about the laboratory that prepared the report. Anaya also stated, "I believe my innocence, my actual innocence" and stated that he believes he is innocent of rape because he "would never do that." (Tr. 36.)

{¶ 9} The assistant prosecuting attorney addressed the court and presented arguments in opposition to Anaya's pro se motion to withdraw his guilty plea, including that Anaya was engaged in a full and thorough Crim.R. 11 plea colloquy and he was represented by competent counsel at the time of the plea. The assistant prosecuting attorney further argued that the DNA report the State would have

presented at trial shows that Anaya's sperm was found in the victim's underwear, and his DNA was also found on the victim's vagina, breast, and inner thighs.

{¶ 10} The court then overruled the motion to withdraw the guilty plea and proceeded with sentencing. The assistant prosecuting attorney and defense counsel addressed the court. The assistant prosecuting attorney read from the State's sentencing memorandum and read a statement from the victim into the record. The State requested a sentence of at least 20 years. Defense counsel asked the court to consider a sentence between four and seven years.

{¶ 11} The court sentenced Anaya to 11 to 16 and one half years on one of the rape counts, 10 years on the second rape count, and two years on the gross-sexual-imposition count. The court ordered the rape sentences to be served consecutively to each other and the gross-sexual-imposition sentence to be served concurrently, for a total sentence of 21 to 26 and one half years in prison.¹

{¶ 12} Anaya appealed. He now raises four assignments of error for our review:

I. The trial court abused its discretion when it denied Anaya's pre-sentence motion to withdraw his guilty pleas without giving "full and fair consideration" to the motion.

II. The trial court violated Anaya's right to be represented by counsel at all critical stages of his criminal proceedings by entertaining his *pro se* motion to withdraw his guilty plea.

III. Anaya was denied effective assistance of counsel as guaranteed by the Constitution of the United States of America.

¹ The court also imposed a sentence of three years in the weapons case and ordered that sentence to be served consecutively to the sentence imposed in the instant case, for a total aggregate sentence of 24 to 29 and one half years.

IV. The trial court erred by imposing an indefinite sentence upon Anaya pursuant to Ohio's Reagan Tokes Law, an unconstitutional statutory scheme that permits the imposition of prison sentences on future conduct.

II. Law and Analysis

A. Motion to Withdraw Guilty Plea

{¶ 13} In his first assignment of error, Anaya argues that the trial court abused its discretion when it denied his presentence motion to withdraw his guilty pleas without giving “full and fair consideration” to the motion.

{¶ 14} We review a trial court's decision to grant or deny a presentence motion to withdraw a guilty plea for an abuse of discretion. *State v. Howard*, 2024-Ohio-243, ¶ 21 (8th Dist.), citing *State v. Xie*, 62 Ohio St.3d 521, 527 (1992).

{¶ 15} Generally, “a presentence motion to withdraw a guilty plea should be freely and liberally granted.” *State v. Pames*, 2022-Ohio-616, ¶ 28 (8th Dist.), quoting *Xie* at 526. However, a defendant does not have an absolute right to withdraw their plea, even when the request is made prior to the trial court imposing a sentence. *Id.* Prior to ruling on a presentence motion to withdraw a guilty plea, the trial court must “conduct a hearing to determine whether there is a reasonable and legitimate basis for withdrawing the plea.” *Id.* This court has held that a trial court's denial of a motion to withdraw a guilty plea is not an abuse of discretion where the record demonstrates

“(1) the accused is represented by competent counsel;

(2) the accused was afforded a full hearing, pursuant to Crim.R 11, before he entered the plea;

(3) after the motion to withdraw is filed, the accused is given a complete and impartial hearing on the motion; and

(4) the court gives full and fair consideration to the plea withdrawal request.”

State v. Griffin, 2023-Ohio-2776, ¶ 15 (8th Dist.), quoting *State v. Read-Bates*, 2020-Ohio-3456, ¶ 16 (8th Dist.), citing *State v. Peterseim*, 68 Ohio App.2d 211, 214 (8th Dist. 1980).

{¶ 16} This court has identified several nonexhaustive factors for trial courts to consider when deciding a presentence motion to withdraw a guilty plea, including:

(1) whether the motion was made in a reasonable time; (2) whether the motion states specific reasons for withdrawal; (3) whether the defendant understood the nature of the charges and the possible penalties; (4) whether the defendant was perhaps not guilty or had a complete defense and (5) whether the state would be prejudiced by the withdrawal of the plea.

Id., citing *State v. Moore*, 2020-Ohio-3459, ¶ 56 (8th Dist.); *Hines* at ¶ 10; *State v. Heisa*, 2015-Ohio-2269, ¶ 19 (8th Dist.).

{¶ 17} Anaya argues that the trial court did not give full and fair consideration to his motion because the trial court denied the motion before hearing it. We disagree. Our review of the record reflects that while the trial court did initially say that Anaya’s “request is denied” — when it was not clear whether the “request” was a request for a continuance or a motion to withdraw his guilty plea — it went on to have a complete and impartial hearing, during which it gave full and fair consideration to Anaya’s motion.

{¶ 18} Further, we note that although Anaya was represented by two competent attorneys, at the outset of the sentencing hearing, neither attorney joined in Anaya’s motion. While defense attorney 2 stated that he would make the motion on Anaya’s behalf, when the court questioned him about the grounds for the motion, he was unable to present any evidence or argument in support of the motion. The trial court therefore treated the motion as pro se and again inquired of Anaya as to the basis for the motion to withdraw.

{¶ 19} Hybrid representation is not permitted in Ohio, and this court has held that “[a] trial court does not abuse its discretion when it denies a pro se motion to withdraw a plea where counsel simultaneously represents the defendant.” *State v. Howard*, 2024-Ohio-243, ¶ 25 (8th Dist.). Thus, the trial court was not obligated to entertain Anaya’s motion to withdraw his plea and could have struck the motion. *State v. Washington*, 2012-Ohio-1531, ¶ 11 (8th Dist.); *State v. Davis*, 2006-Ohio-5039, ¶ 12 (10th Dist.). Instead, the court heard statements and arguments from Anaya, both of his assigned counsel, and the assistant prosecuting attorney, before ultimately denying the motion. Therefore, we cannot say that the trial court failed to give full and fair consideration to Anaya’s motion to withdraw his guilty plea. Anaya’s first assignment of error is overruled.

B. Right to Representation by Counsel

{¶ 20} In Anaya’s second assignment of error, he argues that the trial court violated his right to be represented by counsel at all critical stages of the proceedings by entertaining his pro se motion to withdraw his guilty plea. Anaya argues that

because he did not waive his right to counsel, the trial court should not have entertained his pro se motion.

{¶ 21} Our review of the record shows that in its sentencing journal entry, the trial court stated: “Pro se, the defendant moves the court to withdraw his guilty plea, made orally. The court overrules the motion.” Our review of the record also shows that during the hearing, Anaya was represented by two competent defense attorneys, both of whom addressed the court related to his motion to withdraw his guilty plea, although defense attorney 1 did not make the motion on Anaya’s behalf. As discussed above, the trial court was not obligated to entertain Anaya’s motion to withdraw his plea because hybrid representation is not permitted in Ohio.

{¶ 22} Anaya argues that the trial court should have engaged him in a colloquy to ensure that he understood the pitfalls of self-representation in the context of his presentence motion to withdraw his guilty plea. We disagree. We reiterate that hybrid representation is not permitted in Ohio. The trial court’s decision to entertain Anaya’s pro se motion — apparently out of an abundance of caution, despite the fact that Anaya was represented by counsel — did not somehow deprive Anaya of his right to be represented by counsel.

{¶ 23} For these reasons, Anaya’s second assignment of error is overruled.

C. Ineffective Assistance of Counsel

{¶ 24} In Anaya’s third assignment of error, he argues that he received ineffective assistance of counsel when one of his defense attorneys told the court that

he would make a motion to withdraw Anaya's guilty plea but was unprepared to do so and offered no evidence in support of that motion. We disagree.

{¶ 25} To establish ineffective assistance of counsel, “a defendant must prove (1) his counsel was deficient in some aspect of his representation, and (2) there is a reasonable probability that, were it not for counsel's errors, the result of the trial would have been different.” *State v. Houston*, 2018-Ohio-3043, ¶ 18 (8th Dist.), citing *Strickland v. Washington*, 466 U.S. 668 (1984). “Defense counsel's performance must fall below an objective standard of reasonableness to be deficient for purposes of ineffective assistance of counsel.” *State v. Linville*, 2017-Ohio-101, ¶ 6 (8th Dist.), quoting *State v. Jones*, 2016-Ohio-688, ¶ 14 (8th Dist.).

{¶ 26} A defendant waives a claim of ineffective assistance of counsel by a guilty plea, except to the extent that it caused the plea to be less than knowing, intelligent, and voluntary. *State v. Howard*, 2024-Ohio-243, ¶ 32 (8th Dist.), citing *State v. Elliott*, 2016-Ohio-2637, ¶ 30 (8th Dist.). Further, in the context of a guilty plea, “[a] defendant receives ineffective assistance of counsel when his trial counsel “fails to act on his request to withdraw his plea when the possibility that he would have been allowed to withdraw his plea is not insubstantial.”” *Id.* at ¶ 34, quoting *State v. Drake*, 2010-Ohio-1065, ¶ 11 (8th Dist.), quoting *State v. Strutton*, 62 Ohio App.3d 248, 252 (2d Dist. 1998).

{¶ 27} Anaya argues that had an attorney made a presentation to the court and elicited testimony from Anaya in support of his motion to withdraw his guilty plea, it would have been clear that Anaya's plea was not knowingly, intelligently, and

voluntarily entered because Anaya did not understand the State's evidence against him. This argument is undermined by the record. Although defense attorney 2 presented no evidence in support of Anaya's motion to withdraw his guilty plea, the record reflects that the court heard arguments in support of the motion. Moreover, the DNA evidence was discussed at length by Anaya, defense attorney 1, and the assistant prosecuting attorney.

{¶ 28} Because, as discussed above, the trial court appropriately denied Anaya's motion to withdraw his guilty plea after a full and fair consideration of the motion, we cannot say that a different performance from Anaya's attorney would have resulted in the trial court's granting of the motion to withdraw. Therefore, Anaya cannot satisfy either prong of the *Strickland* test and has not established that he received ineffective assistance of counsel. Anaya's third assignment of error is overruled.

D. Reagan Tokes Law

{¶ 29} In Anaya's fourth assignment of error, he argues that the trial court erred by imposing an indefinite sentence pursuant to the Reagan Tokes Law. As Anaya acknowledges, this court is bound by the Ohio Supreme Court's decision in *State v. Hacker*, 2023-Ohio-2535, holding that the Reagan Tokes Law is constitutional. Anaya has not raised any novel issues concerning the constitutionality of the Reagan Tokes Law that have not been addressed in *Hacker*. Therefore, we summarily overrule Anaya's fourth assignment of error.

{¶ 30} 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. The defendant's conviction having been affirmed, any bail pending appeal is terminated.

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

TIMOTHY W. CLARY, JUDGE

MICHELLE J. SHEEHAN, A.J., CONCURS;
MARY J. BOYLE, J., CONCURS (WITH SEPARATE OPINION)

MARY J. BOYLE, J., CONCURRING:

{¶ 31} I concur with the majority. I write separately as I did in *State v. McCargo*, 2026-Ohio-3115 (8th Dist.), to emphasize my opinion that while a defendant does not have the right to hybrid representation, there are situations where a trial court should entertain a pro se motion, even if the defendant is represented by counsel, because of the relief sought by the defendant. *See State v. Deal*, 17 Ohio St.2d 17 (1969) (Where during trial, the appellant complained about the adequacy of counsel. The trial court found that the complaint was unreasonable and proceeded with the trial. The Ohio Supreme Court held that based on circumstances of that case, “it was the duty of the trial court to see that the record contained an adequate investigation of appellant’s complaint.” *Id.* at 17.).