[Cite as *State v. Howard*, 2026-Ohio-3876.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	No. 115927
v.	:	
JA'BRIAN HOWARD,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: October 1, 2026

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case Nos. CR-24-691561-A, CR-24-692819-A, and CR-24-693653-C

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and John D. Kirkland, Assistant Prosecuting Attorney, *for appellee*.

Scott J. Friedman, *for appellant*.

LISA B. FORBES, P.J.:

{¶ 1} Ja'Brian Howard ("Howard") appeals convictions arising from guilty pleas in three cases. Following a thorough review of the record and the law, we affirm.

I. Procedural History

{¶ 2} The State filed three indictments against Howard in the Cuyahoga County Court of Common Pleas, in Cuyahoga C.P. No. CR-24-691561-A ("Receiving Stolen Property Case"), Cuyahoga C.P. No. CR-24-692819-A ("Aggravated Robbery Case"), and Cuyahoga C.P. No. CR-24-693653-C ("Engaging in Pattern of Corrupt Activity Case").[1] The Receiving Stolen Property Case and the Aggravated Robbery Case proceeded before one judge, referred to here as the First Judge. The Engaging in Pattern of Corrupt Activity Case was assigned to a different judge, referred to here as the Second Judge.

{¶ 3} A trial began in the Aggravated Robbery Case on April 28, 2025. Following testimony from several witnesses, Howard moved for a mistrial based on the State's failure to provide the defense a DNA report concerning a car that was allegedly associated with the robbery in that case. The court granted the request for a mistrial.

{¶ 4} Howard appeared for trial in the Receiving Stolen Property Case and Aggravated Robbery Case before the First Judge on July 14, 2025. During proceedings, defense counsel informed the court that Howard wanted a different attorney to represent him. Howard declared, "I just would like to remove counsel because I feel like we [are] not seeing eye to eye." Howard and the court discussed Howard's reason for requesting new counsel:

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[1] Between these three cases, Howard was indicted on more than 100 total offenses, several dozen of which resulted in guilty pleas. For convenience, we identify each case by the first offense listed in the original indictment.

The Court: [T]he reason for the [oral motion to remove counsel] is that you don't like the [plea] offer; is that it?

Howard: No, it's the things that I asked are not getting done.

. . .

The Court: What type of things are you asking to be done?

Howard: I have asked multiple times to receive — to get a body camera footage of me getting arrested.

The Court: Is that available? Have you had the opportunity to show him the body cameras?

Defense Counsel: Oh, some, but not that. There is a lot of evidence that I have had to verbally summarize and characterize. I'm willing to work very hard. There is a lot. There's just a lot, lot, lot of evidence.

The Court: Okay. So but the body cam of him being arrested, is that easily found?

The State: It would be, Your Honor.

The Court: Okay. What else besides the body cam?

Howard: I haven't asked anything else, but I would —

The Court: Okay. Because you haven't received the body cam, you want to get rid of counsel on the day of trial?

Howard: Yes.

The Court: I'm going to deny your motion to remove counsel.

. . .

The Court: What we're going to do, you are still down for trial today and we're going to try to give you the opportunity to show him some of the body cam.

Defense Counsel: Great . . . I'm happy to take as much time as I need.

{¶ 5} Following this conversation, the court recessed to allow Howard's attorney to show him additional evidence.

{¶ 6} The next day, on July 15, 2025, the State and Howard's attorney informed the First Judge that they had reached a plea agreement in the Receiving Stolen Property Case and the Aggravated Robbery Case. The parties informed the court that the agreement included a recommended sentence of 18 to 28 years of incarceration for the offenses in all three cases underlying this appeal. Upon receiving this information, the court engaged Howard in a plea colloquy. During this colloquy, the following exchange occurred:

The Court: Are you satisfied with the services of your lawyer?

Howard: Yes, Your Honor.[2]

{¶ 7} Also during the plea colloquy, the court inquired of Howard whether he understood that he was presumed innocent and that by entering a guilty plea, he admitted "to the truth of the facts and to his full guilt." In response to each of these inquiries, Howard replied, "Yes, Your Honor." The court asked Howard whether he understood that he had and was "giving up" each of the following rights: to have the State prove his guilt at a trial before a jury or before the court, to confront and cross-examine witnesses against him, to subpoena witnesses to testify in his favor, and not to testify at trial, which could not be used against him to prove his guilt. Howard responded, "Yes, Your Honor," to each of these questions. The court asked Howard

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[2] The same lawyer represented Howard before the First Judge in the Receiving Stolen Property Case and in the Aggravated Robbery Case.

whether he understood that the court could proceed with judgment and sentencing immediately after he pled guilty, which Howard confirmed that he understood. The court then recited each offense to which Howard would plead guilty and the maximum potential penalty associated with each offense, all of which Howard said that he understood. The State and counsel for Howard each indicated that the court had complied with Crim.R. 11. Following this exchange, the court found "that Mr. Howard's plea will be made knowingly, intelligently, and voluntarily." Howard then pled guilty to each of the agreed-upon offenses. The court accepted Howard's guilty plea and some 30 charges were dismissed.

{¶ 8} Also on July 15, 2025, before the Second Judge, Howard pled guilty to offenses in the Engaging in Pattern of Corrupt Activity Case. Howard's lawyer and the State each explained that the plea agreement included a recommended sentence of 18 to 28 years of incarceration for all three cases underlying this appeal. Before accepting Howard's guilty plea, the trial court engaged in a comprehensive Crim.R. 11 plea colloquy, including addressing his constitutional rights, as well as the potential maximum penalties he faced. During that colloquy, the following conversation occurred:

> The Court: Have you had enough time to consult with your attorney?
>
> Howard: Yes, your Honor.
>
> The Court: Are you satisfied with his representation?
>
> Howard: Yes, your Honor.

{¶ 9} On July 29, 2025, before he was sentenced in any of the cases underlying this appeal, Howard — acting pro se — sought to withdraw his guilty plea. Howard filed identical motions to withdraw his guilty pleas in the Receiving Stolen Property Case and the Aggravated Robbery Case, each before the First Judge. He did not file that motion in the Engaging in Pattern of Corrupt Activity Case before the Second Judge.[3] In his written motion, Howard stated, "I feel like I did not fully understand the consequences of the plea at the time it was made. I also believe that I was not adequately informed or represented and their [sic] were factors that pressured or influenced me into accepting the plea without a clear understanding of my rights or the evidence."

{¶ 10} On August 12, 2025, the First Judge convened the court for sentencing concerning the Receiving Stolen Property Case and the Aggravated Robbery Case ("First Hearing"). During the First Hearing, regarding Howard's motion to withdraw his guilty plea, the following exchange occurred:

> The Court: Mr. Howard, what would you like me to know?
>
> Howard: I would like for you to please take into consideration about the motion that I filed.
>
> The Court: I received a motion to withdraw a plea. . . . [B]ecause you have counsel, you can't file a motion . . . . You have to go through your counsel and your counsel hasn't filed a motion to withdraw a plea.
>
> Howard: Okay, Your Honor.

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[3] Howard raises no arguments about other documents that were filed in the Engaging in Pattern of Corrupt Activity case related to his wish to withdraw his guilty plea.

{¶ 11} Howard then stated, "I would like you to know that everything that the victims went through I am remorseful. I am sorry that it happened to them and I don't wish that pain on anybody. And I just ask the Court to please consider giving me the minimum so I can at least get back to and live a life that I didn't get to yet live." The court proceeded to sentencing, imposing on Howard a total aggregate sentence of 21 years in prison, with a potential maximum aggregate sentence of 28 years under the Reagan Tokes Law.

{¶ 12} On August 27, 2025, the Second Judge convened the court for sentencing concerning the Engaging in Pattern of Corrupt Activity Case ("Second Hearing"). Though Howard had not filed a written motion to withdraw his plea in that case, at the outset of the Second Hearing, the court made the following inquiry of Howard:

> The Court: Before we begin the sentencing, it's also my understanding that . . . the defendant filed pro se a motion to withdraw his plea.
>
> Howard: Yes, your honor.
>
> The Court: And why do you feel you should withdraw your [plea]?
>
> Howard: I feel like it wasn't entered voluntarily, intelligently and knowingly . . . . I never got to see any evidence pertaining to the case.
>
> . . .
>
> The Court: And you're saying that [defense counsel] didn't provide you with the evidence?
>
> Howard: Yes, your Honor. I'm saying that.
>
> . . .
>
> Howard: I never got the chance to see the evidence on my case.

> The Court: [A]ll the times he met with you, he never discussed your case with you?
>
> Howard: We only met twice.

{¶ 13} The court asked defense counsel about his representation of Howard.

> The Court: [Defense counsel,] I assume you met more than twice; is that correct?
>
> Defense counsel: Yes, your Honor . . . . We met with him on multiple occasions . . . . We did go over the discovery that was in place here . . . .

{¶ 14} Defense counsel did not support Howard's oral motion to withdraw his guilty plea, maintaining, "I'm going to ask [the court] for a concurrent sentence . . . and ask you to stay within the range that was requested."

{¶ 15} The prosecutor indicated that defense counsel had reviewed the evidence with Howard, claiming, "I have text messages and email messages from defense counsel, in which defense counsel states, 'I'm reviewing the videos with Mr. Howard currently in jail' . . . . So, we have even evidence . . . that [defense counsel] did show Mr. Howard the discovery . . . . That was probably a week before the plea agreement was arranged."

{¶ 16} The court declared, "With regards to the motion to withdraw the plea, at this time it will be denied." The court proceeded to sentencing, imposing on Howard an additional 21-year prison term to run concurrently to the sentence that had already been imposed on him during the First Hearing.

{¶ 17} Howard appealed, raising the following assignment of error:

> The trial court erred when it denied the Appellant's presentence motion to withdraw his guilty plea.

II. Law and Analysis

{¶ 18} Howard asserts that both trial courts denied him a meaningful hearing on his motions to withdraw his plea. He argues that he received no hearing before the First Judge and that the Second Judge only briefly addressed his request before denying it. We disagree that either trial court abused its discretion in denying Howard's motion to withdraw his plea.

{¶ 19} Crim.R. 32.1 addresses motions to withdraw a guilty plea, which "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." While presentencing motions to withdraw a guilty plea "'should be freely and liberally granted,'" a defendant "'does not, however, have an absolute right to withdraw'" a guilty plea before sentencing. *State v. Barnes*, 2022-Ohio-4486, ¶ 13, quoting *State v. Xie*, 62 Ohio St.3d 521, 527 (1992). "[W]hen a presentence motion to withdraw is filed, 'the trial court must conduct a hearing to determine whether there is a reasonable and legitimate basis for the withdrawal of the plea.'" *State v. Bradley*, 2025-Ohio-2675, ¶ 9 (8th Dist.), quoting *Xie* at 527.

{¶ 20} The scope of the hearing afforded a defendant that seeks to withdraw a guilty plea before sentencing is within the discretion of the trial court. *State v. Powell*, 2019-Ohio-346, ¶ 15 (8th Dist.), citing *State v. Bosby*, 2011-Ohio-599, ¶ 10 (8th Dist.). A "full" hearing is not required in all cases; rather, the hearing must comport with the minimum standards of due process, that is, meaningful notice and

opportunity to be heard. *State v. Thomas*, 2023-Ohio-4537, ¶ 17 (8th Dist.), citing *State v. Robinson*, 2008-Ohio-4866, ¶ 24 (8th Dist.).

{¶ 21} Notable here is that Howard's counsel did not file or otherwise support Howard's pro se motions to withdraw his guilty plea. This court has held that "[a] defendant has a right to counsel, or a right to represent himself pro se, but . . . does not have the right to both counsel and pro se representation simultaneously, which is referenced as hybrid representation." *State v. Pierce*, 2019-Ohio-3762, ¶ 9-11 (8th Dist.), citing *State v. Mongo*, 2015-Ohio-1139, ¶ 13 (8th Dist.) (Trial court did not abuse its discretion in denying represented defendant's pro se motion to withdraw guilty plea, which counsel did not support.). Acknowledging our precedent on hybrid representation, this court has also found that a trial court "was not required to hold a hearing on [an] appellant's pro se motion to withdraw his guilty plea." *State v. Hill*, 2019-Ohio-1647, ¶ 14 (8th Dist.).

{¶ 22} "'We review a trial court's ruling on a motion to withdraw a guilty plea for an abuse of discretion.'" *Bradley*, 2025-Ohio-2675, at ¶ 12 (8th Dist.), quoting *State v. Hines*, 2020-Ohio-663, ¶ 7 (8th Dist.). An abuse of discretion occurs when a court exercises "its judgment, in an unwarranted way, in regard to a matter over which it has discretionary authority." *Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 35. An abuse of discretion "'implies that the court's attitude is unreasonable, arbitrary or unconscionable.'" *W.A.F.P., Inc. v. Sky Fuel Inc.*, 2024-Ohio-3297, ¶ 13 (8th Dist.), quoting *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 23} When determining whether a trial court abused its discretion in denying a presentence motion to withdraw a guilty plea, this court considers the following factors:

> (1) whether the prosecution would be prejudiced if the plea were vacated; (2) whether the offender was represented by highly competent counsel; (3) the extent of the Crim.R. 11 hearing; (4) whether there was a full hearing on the motion to withdraw the offender's guilty plea; (5) whether the trial court gave full and fair consideration to the motion; (6) whether the motion was made within a reasonable time; (7) whether the motion set forth specific reasons for the withdrawal; (8) whether the accused understood the nature of the charges and possible penalties; and (9) whether the accused was perhaps not guilty or had a complete defense to the crime.

State v. Jones, 2018-Ohio-2055, ¶ 32 (8th Dist.), citing *State v. Zimmerman*, 2010-Ohio-4087, ¶ 13. "Consideration of these factors is a balancing test and no single factor is conclusive." *Id.*, citing *id.*

{¶ 24} Pertinent to our assessment of the third factor — the "extent of the Crim.R. 11 hearing" that resulted in the guilty pleas that Howard now seeks to withdraw — we note that Crim.R. 11(C)(2) provides that a court shall not accept a guilty plea without first:

> (a) Determining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.
>
> (b) Informing the defendant of and determining that the defendant understands the effect of the plea of guilty or no contest, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.
>
> (c) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury

> trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant's favor, and to require the state to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself.

{¶ 25} Upon review of the record, we do not find that either trial court abused its discretion in denying Howard's pro se motions to withdraw his guilty pleas. As noted above, Howard was represented by counsel who did not support his pro se motions. This court has found that a trial court acts within its discretion by denying a motion to withdraw a guilty plea that was the product of hybrid representation. *Pierce*, 2019-Ohio-3762, at ¶ 9 (8th Dist.). Following this precedent, and for this reason alone, Howard has not demonstrated that either the First Judge or the Second Judge abused its discretion.

{¶ 26} Further, Howard has not shown that his motions to withdraw his guilty pleas in either trial court were meritorious such that the trial courts' denial of them constituted an abuse of discretion. The only reason that Howard provided to either the trial court or to this court for wishing to withdraw his guilty plea is that, before he pled guilty, he did not have ample opportunity to review the evidence against him. However, these cases had a long history, including one mistrial to address evidentiary issues and numerous opportunities for Howard to make the court aware of any failure by counsel to discuss the evidence with him, which he availed himself to at least once before pleading guilty.

{¶ 27} Prior to Howard's plea hearing before the First Judge, the trial court discussed with Howard his concerns about reviewing the evidence. The court asked

Howard what evidence he wished to see, which Howard identified. The court then recessed so that defense counsel could review that evidence with Howard. Before pleading guilty, Howard informed the court that he was satisfied with his attorney's representation of him. The court conducted a complete plea hearing under Crim.R. 11, which included Howard's assertion that he understood the charges against him and that, by entering a guilty plea, he admitted "to the truth of the facts and to his full guilt." At no point during his plea hearing did Howard indicate that he desired further review of the evidence against him. Under these circumstances, in light of these cases' unique procedural histories, we cannot say that the trial court's decisions pertaining to Howard's written pro se motions to withdraw his guilty pleas amounted to an abuse of discretion.

{¶ 28} In the Engaging in Pattern of Corrupt Activity Case, the court made inquiry of Howard before it denied Howard's motion, notwithstanding Howard's failure to file a written motion in that case. Again, Howard argues that the court erred in denying the motion because he had not been given an opportunity to review the evidence against him. However, during the Second Hearing, defense counsel and the prosecutor contradicted Howard's claim that he had been deprived of an opportunity to review the evidence. Both defense counsel and the prosecutor indicated that defense counsel had gone over with Howard the discovery that the State had provided — including viewing videos related to the charged offenses — before Howard pled guilty. Under these circumstances, Howard has not identified

any basis on which this court could conclude that the trial court abused its discretion in denying Howard's motion at the Second Hearing.

{¶ 29} In light of the foregoing, concerning each of the three cases underlying this appeal, we do not find that either trial court abused its discretion in denying Howard's motion to withdraw his guilty plea or in its handling during proceedings of his request to do so. Accordingly, Howard's sole assignment of error is overruled.

{¶ 30} Judgment affirmed.

It is ordered that appellee recover from appellant the 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 convictions having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

LISA B. FORBES, PRESIDING JUDGE

EILEEN T. GALLAGHER, J., and
MARY J. BOYLE, J., CONCUR