

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, :  
 : Nos. 116076 and 116077  
 v. :  
 :  
 THANH LUU, :  
 :  
 Defendant-Appellant. :

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**JOURNAL ENTRY AND OPINION**

**JUDGMENT: AFFIRMED**  
**RELEASED AND JOURNALIZED: October 15, 2026**

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Criminal Appeal from the Cuyahoga County Court of Common Pleas  
Case Nos. CR-98-359230-A and CR-98-359231-ZA

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***Appearances:***

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

DW&V Law Office Co., LLC, and Dean Van Dress, *for appellant*.

MICHAEL JOHN RYAN, P.J.:

{¶ 1} Defendant-appellant, Thanh Luu, appeals the trial court's denial of his motion to vacate his guilty pleas. For the reasons that follow, we affirm.

**I. Background**

**{¶ 2}** In 1998, appellant was charged in CR-98-359230-A with one count of aggravated robbery with a three-year firearm specification and one count of felonious assault. He was also charged in CR-98-359231-ZA with one count of carrying concealed weapons. In June 1998, appellant entered guilty pleas in both cases. In CR-98-359230-A, appellant pleaded guilty to felonious assault, in violation of R.C. 2903.11, a second-degree felony. In CR-98-359231-A, he pleaded guilty to carrying concealed weapons, in violation of R.C. 2923.12, a fourth-degree felony, and agreed to forfeit a revolver. During the plea hearing, the trial court asked if appellant was a United States citizen. Appellant responded, “No.” Immediately after entering his guilty pleas, the trial court stated:

[I]f you are not a citizen of the United States, you are hereby advised that a conviction of the offense to which you are pleading guilty may have the consequence of deportation, exclusion from admission to the United States or denial of naturalization pursuant to the laws of the United States. Do you understand that, Mr. Luu?

**{¶ 3}** Appellant indicated he understood. On a subsequent date, the trial court imposed a total prison sentence of two years. Appellant did not file a direct appeal.

**{¶ 4}** On February 20, 2017, appellant filed a motion to vacate his guilty pleas in both cases. In his motion appellant claimed that (1) the trial court failed to comply with R.C. 2943.031(A), which governs advisements a court must give to non-citizen defendants, and (2) trial counsel was constitutionally ineffective for failing to advise him of the possible immigration consequences of his guilty pleas. The trial court denied his motion. Appellant did not appeal this decision. On March 21, 2018,

appellant filed a motion for reconsideration of the trial court's denial of his motion to vacate his guilty pleas. The trial court denied his motion for reconsideration, and appellant did not appeal that decision either.

**{¶ 5}** On December 12, 2025, appellant filed another motion to vacate his guilty pleas in both cases. Appellant reiterated the same claims from his 2017 motion: (1) the trial court failed to comply with R.C. 2943.031(A), and (2) he was denied effective assistance of trial counsel. Additionally, appellant claimed his guilty pleas should be vacated because (3) he was not provided with an interpreter at his change-of-plea hearing and (4) carrying concealed weapons is no longer a crime. The trial court denied appellant's motion. The denial of appellant's successive motion to withdraw his guilty pleas is the subject of this appeal.

**{¶ 6}** Appellant raises the following five assignments of error, which will be combined for review:

- I. The trial court abused its discretion when it failed to hold a hearing or to explain its ruling or findings in relation to Mr. Luu's "substantial right" as a non-citizen.
- II. The Eighth District created new precedent since Mr. Luu was in court.
- III. Mr. Luu was not afforded an interpreter.
- IV. Carrying a concealed weapon isn't a crime anymore.
- V. Mr. Luu was not advised by his attorney that deportation was a consequence of his plea bargain.

## **II. Law and Analysis**

{¶ 7} 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.” Res judicata, however, generally precludes a defendant from raising claims in a Crim.R. 32.1 postsentence motion to withdraw a guilty plea that could have been raised in a direct appeal of the defendant’s convictions. *State v. Bates*, 2024-Ohio-3309, ¶ 29 (8th Dist.). Res judicata also “acts to bar raising issues in a successive Crim.R. 32.1 motion to withdraw a plea of guilty where those issues could have been raised in the prior Crim.R. 32.1 motion.” (Cleaned up.) *State v. Thompson*, 2026-Ohio-2722, ¶ 7, fn. 1 (8th Dist.), quoting *State v. McGraw*, 2022-Ohio-1321, ¶ 6 (8th Dist.).

{¶ 8} This court reviews the denial of a postsentence motion to withdraw a guilty plea for an abuse of discretion. *State v. Morris*, 2026-Ohio-37, ¶ 10 (8th Dist.), citing *State v. Davis*, 2021-Ohio-4015 (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.

{¶ 9} Appellant entered guilty pleas in 1998 and was sentenced to two years in prison. He did not file a direct appeal. Almost two decades later, in 2017, appellant filed his first motion to withdraw those pleas, which the trial court denied. He moved the court to reconsider its decision, and the trial court denied that motion. Appellant did not appeal either decision.

{¶ 10} In his 2017 motion to withdraw his guilty pleas, appellant argued that his guilty pleas should be vacated because he was unaware his pleas could have serious immigration repercussions and both the trial court and his attorney failed to inform him of these possible repercussions prior to entering his plea. In the motion, appellant admitted that he had become aware of the immigration consequences in October 1999 when the United States government commenced removal proceedings.

{¶ 11} The State opposed the 2017 motion, arguing that the 18-year delay was unreasonable, especially because appellant became aware of the immigration consequences in October 1999. The trial court denied the motion, and appellant's subsequent motion to reconsider. Again, appellant did not appeal these decisions.

{¶ 12} In appellant's 2025 motion to withdraw his guilty pleas, he repeated his previous arguments and further argued that he should have been afforded an interpreter at his plea hearing and his pleas should be vacated because carrying a concealed weapon is now legal in Ohio.<sup>1</sup>

{¶ 13} Ohio courts have applied res judicata to successive motions to withdraw a guilty plea. “[R]es judicata prevents repeated attacks on a final judgment and applies to issues that were or might have been previously litigated.” *State v. Smith*, 2020-Ohio-3717, ¶ 13 (8th Dist.), quoting *State v. Sneed*, 2005-Ohio-1865, ¶ 16 (8th Dist.). “Thus, where a defendant files a postconviction motion to

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<sup>1</sup> On appeal, appellant also claims that the lack of a reviewable record violated his substantial rights. Appellant did not raise this issue at the trial-court level; therefore, he has waived this argument on appeal.

withdraw and fails to raise an issue that could have been raised, the defendant is precluded from raising the issue in a subsequent motion to withdraw.” *Smith* at *id.*, quoting *Sneed* at ¶ 17.

{¶ 14} Appellant’s claims that the court abused its discretion and his counsel was ineffective for failing to inform him of possible immigration consequences related to his guilty pleas were raised in his first motion to withdraw and are now barred by res judicata. Appellant’s additional argument that his rights were violated because he was not provided with an interpreter could have been raised on direct appeal and is therefore also barred by res judicata.

{¶ 15} As to appellant’s claim that 2022 changes to Ohio’s concealed carry law should apply to this case, he has failed to argue how current law should apply retroactively to his 1998 conviction or cite any authority in support of this argument. This court will not address appellant’s undeveloped argument, nor will it create one on his behalf.

{¶ 16} Appellant claims that the trial court was required to hold a hearing on or issue findings of fact when denying his motion to withdraw. Crim.R. 32.1 does not require a trial court to issue findings when deciding a postsentence motion to withdraw a guilty plea. *State v. Robinson*, 2022-Ohio-82, ¶ 11 (8th Dist.). Likewise, a trial court is not required to conduct an evidentiary hearing when the record demonstrates arguments in support of a postsentence motion to withdraw a plea are barred by res judicata. *State v. Mulkey*, 2020-Ohio-3531, ¶ 8 (9th Dist.).

{¶ 17} Appellant relies on *State v. Francis*, 2004-Ohio-6894, in which the Ohio Supreme Court considered whether a nine-year delay in filing a motion to withdraw a plea based on the trial court's failure to properly advise the defendant of immigration consequences was untimely as a matter of law. The *Francis* Court held that untimeliness was not a sufficient factor in and of itself to justify denial of the motion. *Id.* at ¶ 57. *Francis* is easily distinguishable because it did not concern a successive motion to withdraw a guilty plea; therefore, res judicata was not implicated.

{¶ 18} Appellant also relies on *Cleveland v. Hernandez*, 2019-Ohio-255 (8th Dist.), in which this court held that a trial court shall give a noncitizen the required R.C. 2943.031 advisement. Appellant claims that *Hernandez* is “new precedent,” which requires a trial court to give the deportation advisement prior to accepting a guilty plea. *Hernandez* did not establish new precedent, it merely reiterated well-established law. *See State v. Jukic*, 2015-Ohio-2695, ¶ 4 (8th Dist.) (“The failure to give the R.C. 2943.031 advisement to a noncitizen is mandatory grounds for setting aside a judgment of conviction and permitting the defendant to withdraw a plea of guilty or no contest.”); *State v. Naoum*, 2009-Ohio-618, ¶ 20 (8th Dist.) (When accepting a guilty plea from a noncitizen defendant, a trial court must give the R.C. 2943.031 advisement.); *State v. Schlaf*, 2008-Ohio-6151, ¶ 7-8 (8th Dist.) (holding same).

**{¶ 19}** Because appellant's claims were barred by res judicata, the trial court did not abuse its discretion in denying appellant's motion to withdraw his guilty plea. Thus, his assignments of error are overruled.

**{¶ 20}** 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.

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MICHAEL JOHN RYAN, PRESIDING JUDGE

DEENA R. CALABRESE, J., and  
TIMOTHY W. CLARY, J., CONCUR