

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 31304

Appellee

v.

SCOTT BRUNDAGE

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR-2017-07-2629

Appellant

DECISION AND JOURNAL ENTRY

Dated: June 30, 2025

CARR, Judge.

{¶1} Defendant-Appellant Scott Brundage appeals, pro se, the judgment of the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} In April 2019, Brundage pleaded guilty to rape and multiple counts of gross sexual imposition. The indictment indicated the crimes took place between 2015 and the end of January 2017. “Within days of the plea hearing, and before the trial court sentenced him, [] Brundage sent a letter to the trial court indicating that he wished to withdraw his plea. In that letter, [] Brundage wrote that his attorneys pressured him into accepting the plea and made representations about his potential sentence that proved to be untrue.” *State v. Brundage*, 2020-Ohio-653, ¶ 2 (9th Dist.). “The trial court permitted his attorneys to withdraw, appointed new counsel, and held a hearing on the motion. Following that hearing, the trial court denied the motion. [] Brundage was sentenced to prison terms totaling twenty-four years, and [then appealed].” *Id.*

{¶3} On appeal, Brundage argued that the trial court abused its discretion in denying his motion to withdraw his plea and in sentencing him. *See id.* at ¶ 3, 11. This Court affirmed the trial court’s judgment. *Id.* at ¶ 20. With respect to Brundage’s motion to withdraw, we stated:

In his letter to the trial court, which the trial court construed as a motion to withdraw his guilty plea, [] Brundage alleged that his attorneys misrepresented the potential sentence that he might receive and pressured him into pleading guilty. The trial court conducted a full hearing on the motion, however, and the evidence presented at that hearing undermined [] Brundage’s position. [] Brundage appeared for a complete hearing before pleading guilty, during which the trial court conducted a full colloquy with him pursuant to Crim.R. 11. During that colloquy, he acknowledged the range within which his potential sentence would fall, which was also set forth in the written plea agreement that he signed. [] Brundage’s attorneys explained the discussions that had led up to his guilty plea on the record, and [] Brundage did not express any disagreement or dissatisfaction with counsel’s representation. He affirmed that his attorneys had reviewed the plea agreements with him, had explained the agreements, and had answered all of his questions. The record supports the conclusion that [] Brundage received adequate representation from his attorneys.

The State introduced the recording of a phone call made by the defendant on the day that he entered his guilty plea. During that call, [] Brundage maintained a calm, rational tone. He expressed a clear understanding of the range of sentences that he could receive and emphasized that he would not know his sentence until the trial court made a decision on the issue. He stated that his attorneys reviewed everything with him and expressed no dissatisfaction with their representation.

The overall substance of this conversation reflected that [] Brundage had a change of heart regarding his plea in light of the uncertainty surrounding his sentence, and such a change does not justify withdrawing a plea. Given these circumstances, this Court cannot conclude that the trial court abused its discretion by denying [] Brundage’s motion to withdraw his guilty plea.

(Internal citations omitted.) *Id.* at ¶ 7-9.

{¶4} In July 2024, Brundage filed another motion to withdraw his guilty plea, making several arguments in support of his motion. One of those arguments was that his trial attorneys provided ineffective assistance of counsel in failing to investigate an alibi defense. In support of that argument, Brundage submitted the 2021 affidavit of a woman who averred that Brundage lived in her home from February 2017 through August 2017 and was frequently traveling within

and outside the state during that timeframe. The State opposed the motion arguing that all of Brundage's arguments were barred by res judicata aside from his ineffective assistance of trial counsel argument concerning Brundage's alibi defense. As to that claim, the State maintained Brundage had not established a manifest injustice as the timeframe in the affidavit was outside the timeframe of the crimes charged in the indictment; thus, Brundage's whereabouts during that timeframe were not relevant for his attorneys to investigate. Brundage filed a reply brief. The trial court did not hold a hearing.

{¶5} In November 2024, the trial court issued an entry denying Brundage's motion to withdraw his guilty plea. The trial court concluded that Brundage's arguments were all barred by res judicata. In addition, the trial court noted that if Brundage's argument about ineffective assistance of trial counsel related to his alibi defense was not barred by res judicata, the trial court would conclude that Brundage's trial attorneys were not ineffective for failing to investigate Brundage's whereabouts during times after those listed in the indictment.

{¶6} Brundage has appealed, raising ten assignments of error for our review. Some assignments of error will be addressed together to facilitate our analysis.

II.

ASSIGNMENT OF ERROR I

THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DENIED APPELLANT[’S] MOTION TO WITHDRAW HIS PLEA[.]

{¶7} Brundage argues in his first assignment of error that the trial court abused its discretion in denying his motion to withdraw his guilty plea. Brundage's primary argument appears to be that his motion should have been considered by the trial court as a presentence motion as his sentence was void. Further, if his sentence was void, he maintains that res judicata would be inapplicable.

[P]ro se litigants should be granted reasonable leeway such that their motions and pleadings should be liberally construed so as to decide the issues on the merits, as opposed to technicalities. However, a pro se litigant is presumed to have knowledge of the law and correct legal procedures so that he remains subject to the same rules and procedures to which represented litigants are bound. He is not given greater rights than represented parties, and must bear the consequences of his mistakes. This Court, therefore, must hold [pro se appellants] to the same standard as any represented party.

State v. Frederick, 2018-Ohio-1566, ¶ 4 (9th Dist.), quoting *State v. Taylor*, 2014-Ohio-5738, ¶ 5 (9th Dist.).

{¶8} “A motion made pursuant to Crim.R. 32.1 is addressed to the sound discretion of the trial court, and the good faith, credibility and weight of the movant’s assertions in support of the motion are matters to be resolved by that court.” *State v. Smith*, 49 Ohio St.2d 261 (1977), paragraph two of the syllabus. “A defendant who seeks to withdraw a plea of guilty after the imposition of sentence has the burden of establishing the existence of manifest injustice.” *Id.* at paragraph one of the syllabus.

{¶9} Brundage’s motion was properly considered as a post-sentence motion as his sentence was not void. See *State v. Harper*, 2020-Ohio-2913, ¶ 4 (“Today, we realign our precedent in cases involving the imposition of postrelease control with the traditional understanding of what constitutes a void judgment. When a case is within a court’s subject-matter jurisdiction and the accused is properly before the court, any error in the exercise of that jurisdiction in imposing postrelease control renders the court’s judgment voidable, permitting the sentence to be set aside if the error has been successfully challenged on direct appeal.”). Given the foregoing, Brundage has also not demonstrated that res judicata was completely inapplicable to the situation before us.

This Court has recognized that a successive motion to withdraw a guilty plea filed pursuant to Crim.R. 32.1 is subject to the doctrine of res judicata. Under the doctrine of res judicata, any issue that was or should have been litigated in a prior

action between the parties may not be relitigated. An offender may not raise issues in a successive motion to withdraw a guilty plea that could have been raised in the initial motion.

(Internal quotations and citations omitted.) *State v. Kimbro*, 2014-Ohio-4869, ¶ 7 (9th Dist.).

While Brundage states that the party seeking to apply res judicata bears the burden of demonstrating that it is applicable, he has not explained how the State failed to meet that burden. *See State v. Ford*, 2017-Ohio-9294, ¶ 10 (9th Dist.) (noting it is the appellant’s burden to establish error on appeal). Brundage has not demonstrated that the arguments he made below could not have been raised previously. *See Kimbro* at ¶ 7.

{¶10} Brundage also asserts that the trial court should have had a hearing on his motion. Yet, “a hearing on a post-sentence motion to withdraw a plea is not always required.” *State v. Long*, 2022-Ohio-3096, ¶ 15 (9th Dist.), quoting *State v. West*, 2018-Ohio-1176, ¶ 6 (9th Dist.). Further, Brundage has not pointed this Court to where in the lower court proceedings he requested a hearing, nor could this Court locate one.

{¶11} Brundage has failed to meet his burden on appeal to demonstrate that the trial court abused its discretion in denying his motion to withdraw his guilty plea. Brundage’s first assignment of error is overruled.

ASSIGNMENT OF ERROR II

THE TRIAL COURT VIOLATED APPELLANT[’S] DUE PROCESS UNDER THE 14TH, 5TH, AND 6TH AMENDMENT AND SECTION 10, ARTICLE [I] OF THE OHIO CONST[ITUTION.]

ASSIGNMENT OF ERROR III

THE TRIAL COURT VIOLATED APPELLANT[’S] DUE PROCESS ACCEPTED A GUILTY PLEA WITH NO FACTUAL BASIS[.] (SIC)

ASSIGNMENT OF ERROR IV

THE TRIAL COURT VIOLATED APPELLANT[’S] 5TH, 6TH, AND 14TH CONSTITUTIONAL RIGHTS. THE RIGHT TO BE PRESENT DURING ALL CRITICAL STAGES OF TRIAL[.] (SIC)

ASSIGNMENT OF ERROR V

THE TRIAL COURT ABUSED ITS DISCRETION AND VIOLATED APPELLANT[’S] DUE PROCESS BY PARTICIPATING IN PLEA NEGOTIATIONS[.]

ASSIGNMENT OF ERROR VI

THE TRIAL COURT VIOLATED APPELLANT[’S] DUE PROCESS AND VIOLATED RULE 11 BY NOT ADEQUATELY INFORMING HIM OF HIS WAIVING HIS RIGHT TO APPEAL[.]

ASSIGNMENT OF ERROR VII

THE TRIAL COURT VIOLATED APPELLANT[’S] CONSTITUTIONAL RIGHTS BY ACCEPTING A PLEA THAT WAS UNKNOWING AND NOT VOLUNTARY FOR NOT INFORMING APPELLANT OF POST RELEASE CONSEQUENCES[.]

ASSIGNMENT OF ERROR VIII

TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE AND VIOLATED HIS 6TH AMEND[MENT].]

ASSIGNMENT OF ERROR IX

IT FAILED TO DISCLOSE THE IMPARTIALITY BIAS AND PREJUDICE TO APPELLANT[.] (SIC)

ASSIGNMENT OF ERROR X

BRADY VIOLATION, FRAUD UPON THE COURT[.] (SIC)

{¶12} Brundage’s remaining nine assignments of error address errors he believes have occurred over the course of the litigation. While he raised many of these arguments in his motion to withdraw his guilty plea in the trial court, on appeal, he has not framed any of these issues in terms of how these alleged errors demonstrate the trial court abused its discretion in denying his

motion to withdraw his guilty plea. We are mindful that only the trial court's denial of Brundage's motion to withdraw his guilty plea is before this Court at this time. In other words, it is Brundage's burden on appeal to demonstrate that the trial court abused its discretion in denying his motion to withdraw his guilty plea, however, Brundage has not developed an argument with respect to that issue in his remaining assignments of error. Thus, Brundage has not demonstrated error with respect to the entry that was appealed.

{¶13} Brundage's second through tenth assignments of error are overruled.

III.

{¶14} Brundage's assignments of error are overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

DONNA J. CARR
FOR THE COURT

STEVENSON, P. J.
HENSAL, J.
CONCUR.

APPEARANCES:

SCOTT BRUNDAGE, pro se, Appellant.

ELLIOT KOLKOVICH, Prosecuting Attorney, and C. RICHLEY RALEY, JR., Assistant
Prosecuting Attorney, for Appellee.