[Cite as *State v. Calhoun*, 2026-Ohio-4469.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

STATE OF OHIO Appellee v. TIMOTHY L. CALHOUN Appellant	C.A. Nos. 31743 31744 31745 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE Nos. CR-2019-12-4457 CR-2025-05-1573 CR-2025-08-2439-B

DECISION AND JOURNAL ENTRY

Dated: November 12, 2026

MANNING, Judge.

{¶1} Defendant-Appellant, Timothy Calhoun, appeals from the judgment of the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} Mr. Calhoun was indicted in three separate criminal matters in Summit County. In Case No. CR 2019-12-4457, he was charged with aggravated possession of methamphetamine. In Case No. CR 2025-05-1573, he was charged with burglary, possession of a fentanyl-related compound, and aggravated possession of methamphetamine. In Case No. CR 2025-08-2439-B, he was charged with aggravated possession of methamphetamine and possession of a fentanyl-related compound.

{¶3} Mr. Calhoun agreed to collectively resolve his cases by plea in exchange for an agreed upon sentence of six to nine years in prison. He and his attorney appeared at his plea hearing wherein the trial court conducted an extensive colloquy. After the court accepted Mr. Calhoun's guilty plea, it immediately sentenced him. Consistent with the parties' agreement, the court imposed a total sentence of six to nine years in prison.

{¶4} Following his sentencing hearing, Mr. Calhoun filed a motion to withdraw his plea. The trial court held a hearing on the motion, listened to arguments, and denied the motion. Mr. Calhoun then appealed from the court's judgment in each of his criminal cases. Pursuant to motion, this Court consolidated his three appeals for briefing, argument, and decision.

{¶5} Mr. Calhoun's appeal from the trial court's denial of his motion to withdraw his plea is now before us. He raises one assignment of error for review.

II.

ASSIGNMENT OF ERROR

> THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING [MR. CALHOUN] THE OPPORTUNITY [TO] WITHDRAW HIS PLEA AFTER SENTENCING[.]

{¶6} In his sole assignment of error, Mr. Calhoun argues the trial court abused its discretion when it denied his post-sentence motion to withdraw his plea. We do not agree.

{¶7} "A motion to withdraw a plea of guilty . . . 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." Crim.R. 32.1. "'A 'manifest injustice' is a 'clear or openly unjust act,' . . . and relates to a fundamental flaw in the plea proceedings resulting in a miscarriage of justice . . . .'" (Alterations in original.) *State v. Goodman*, 2024-Ohio-3353, ¶ 8 (9th Dist.), quoting *State v. Straley*, 2019-Ohio-5206, ¶ 14. "A post-sentence

withdrawal of a plea is only permissible under extraordinary cases . . . ." *State v. Gordon*, 2023-Ohio-2754, ¶ 12 (9th Dist.). The burden of establishing manifest injustice falls upon the defendant. *State v. Smith*, 49 Ohio St.2d 261 (1977), paragraph one of the syllabus.

{¶8} "'Ineffective assistance of counsel can form the basis for a claim of manifest injustice . . . .'" *State v. Mills*, 2019-Ohio-2205, ¶ 9 (9th Dist.), quoting *State v. Graham*, 2017-Ohio-908, ¶ 8 (9th Dist.). "A defendant who argues that a guilty plea should be withdrawn because of ineffective assistance of counsel must demonstrate that counsel's performance was actually deficient and that the defendant was prejudiced by it." *State v. Young*, 2015-Ohio-4973, ¶ 6 (9th Dist.). The deficiency must be "'so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment.'" *Id.*, quoting *Strickland v. Washington*, 466 U.S. 668, 687 (1984). As to the prejudice prong, "the defendant must show that there is a reasonable probability that but for counsel's errors, he would not have pleaded guilty." *State v. Gegia*, 2004-Ohio-2124, ¶ 17 (9th Dist.).

{¶9} This Court reviews the denial of a post-sentence motion to withdraw a guilty plea for an abuse of discretion. *State v. Johnson*, 2025-Ohio-2719, ¶ 9 (9th Dist.). "The term 'abuse of discretion' means a ruling that is unreasonable, arbitrary, or unconscionable." *State v. McAlpin*, 2026-Ohio-148, ¶ 14. When applying the abuse of discretion standard, an appellate court may not substitute its judgment for that of the trial court. *Pons v. Ohio State Med. Bd.*, 66 Ohio St.3d 619, 621 (1993).

{¶10} We begin by noting that much of the caselaw Mr. Calhoun cites in his appellate brief pertains to pre-sentence motions to withdraw a plea. He argues that a motion to withdraw a plea must be freely and liberally granted and supported only by a reasonable and legitimate basis for withdrawal. *See State v. Xie*, 62 Ohio St.3d 521, 527 (1992). Yet, Mr. Calhoun has not argued

that he filed a pre-sentence motion to withdraw. The motion he filed in the trial court cited the manifest injustice standard, and the trial court applied that standard. Moreover, Mr. Calhoun acknowledges in his appellate brief that he sought to withdraw his plea *after* sentencing. Because Mr. Calhoun concedes that he filed a post-sentence motion and has not argued that the trial court applied the wrong standard, we review his argument strictly in the context of the manifest injustice standard.

{¶11} The record reflects that the trial court conducted an extensive plea colloquy at which Mr. Calhoun had the benefit of counsel. The court reviewed all of his constitutional and nonconstitutional rights as well as the potential minimum and maximum penalties he faced if he chose to go to trial. The court also asked Mr. Calhoun many questions. Mr. Calhoun denied that anyone had forced him to plead guilty or promised him anything apart from the sentence upon which the parties had agreed. He agreed that he had been given enough time with his attorney, that there was no need for him to consult further with his attorney, and that he was satisfied with his attorney's performance. The court found that Mr. Calhoun had knowingly, intelligently, and voluntarily decided to plead guilty.

{¶12} At the hearing on his motion to withdraw, Mr. Calhoun appeared with his attorney but presented arguments on his own behalf. He argued that his attorney had been provided false information about the weight of the drugs he had possessed. He asked the court for an opportunity to have the drugs reweighed to ensure they were not weighed inside of any container(s). He also argued that he was not sure his attorney had acted in his best interest. He informed the court that he felt "pushed into a plea bargain" and, "if everything was presented to [the court] in a better manner, . . . maybe [he might] get a better result and a sentence lesser than the time that was given to [him]." Mr. Calhoun indicated that he pleaded guilty because he was facing significant prison

time and his attorney told him the agreed sentence was the best outcome he could hope to achieve. He informed the court that he felt he did not have enough time and was not "in the right state of mind" when he decided to plead guilty.

{¶13} Defense counsel responded to several of Mr. Calhoun's arguments. He acknowledged that, at several points, Mr. Calhoun felt the weight of the drugs he had possessed was incorrect because the drugs must have been weighed inside a container. Defense counsel informed the court that the drugs had been properly weighed by the Bureau of Criminal Investigation. He indicated that he had spoken with Mr. Calhoun and his family about the issue "at length" and had repeatedly told Mr. Calhoun his concern was unwarranted. Defense counsel indicated that he had known Mr. Calhoun for about ten years and had represented him before.

{¶14} The trial court found that Mr. Calhoun failed to carry his burden of establishing that a manifest injustice had occurred. It noted that, before accepting Mr. Calhoun's plea, it had questioned him extensively to ensure he was knowingly, intelligently, and voluntarily entering it. It found that Mr. Calhoun had agreed he had not been forced to plea. It also found that Mr. Calhoun had agreed he was satisfied with his attorney, had sufficient time with him, and did not need to consult further with him. The court noted that, had it ordered him to serve consecutive, maximum prison terms on each of his charges, Mr. Calhoun's charges carried a maximum potential sentence of more than 31 years in prison. By pleading guilty, the court reasoned, Mr. Calhoun had ensured himself a sentence of less than a third of that time. Because Mr. Calhoun failed to prove his plea resulted in manifest injustice, the trial court denied his motion to withdraw.

{¶15} On appeal, Mr. Calhoun argues the trial court erred by denying his motion to withdraw because "[i]t is clear from the record that the attorney-client relationship between [him] and his counsel had broken down." He cites statements he made at the motion to withdraw wherein

he said that he felt "pushed into" pleading by his attorney despite having concerns about the weight of the drugs at issue. According to Mr. Calhoun, evidence of a breakdown in the attorney-client relationship warrants the withdrawal of a plea after sentencing.

{¶16} Having reviewed the record, we cannot conclude that the trial court abused its discretion when it denied Mr. Calhoun's motion to withdraw his plea. As noted, manifest injustice will only be found in "extraordinary cases," *Gordon*, 2023-Ohio-2754, at ¶ 12 (9th Dist.), where a defendant can point to a "fundamental flaw in the plea proceedings resulting in a miscarriage of justice . . . ." *Straley*, 2019-Ohio-5206, at ¶ 14. The record does not support Mr. Calhoun's claim that there was a clear breakdown in the attorney-client relationship that led to him pleading guilty. The trial court engaged in an extensive plea colloquy with Mr. Calhoun. At no point did he express dissatisfaction with his attorney. Indeed, he indicated that he was satisfied with his attorney's advice and had sufficient time to consult with him. He also never asked to have new counsel appointed. Mr. Calhoun's attorney continued to represent him at the hearing on his motion to withdraw and addressed Mr. Calhoun's concerns on the record. Defense counsel confirmed that the drugs in this matter had been properly weighed; Mr. Calhoun simply did not want to accept that fact. Mr. Calhoun has not explained how, in this context, his counsel's performance was actually deficient. *See Young*, 2015-Ohio-4973, at ¶ 6 (9th Dist.). Nor has he set forth any argument on the prejudice prong of the *Strickland* analysis. *See Mills*, 2019-Ohio-2205, at ¶ 12 (9th Dist.). By pleading guilty, Mr. Calhoun received the benefit of an agreed upon sentence, the total term of which was significantly less than the maximum penalty he could have faced had he gone to trial. Mr. Calhoun has not argued that, but for the alleged deficiency on the part of his counsel, he would not have pleaded guilty. *See Gegia*, 2004-Ohio-2124, at ¶ 17 (9th Dist.). While ineffective assistance of counsel can form the basis of a manifest injustice claim, *Mills* at ¶ 9,

quoting *Graham*, 2017-Ohio-908, at ¶ 8 (9th Dist.), Mr. Calhoun has not shown that he received ineffective assistance of counsel. Because Mr. Calhoun has not shown that this is the extraordinary case where a manifest injustice occurred, we cannot conclude that the trial court abused its discretion when it denied his post-sentence withdraw of his guilty plea. Accordingly, his assignment of error is overruled.

III.

{¶17} Mr. Calhoun's assignment of error is 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.

NATHAN MANNING
FOR THE COURT

FLAGG LANZINGER, P. J.
STEVENSON, J.
CONCUR.

APPEARANCES:

WESLEY A. JOHNSTON, Attorney at Law, for Appellant.

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