

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NOS. C-100298
		C-100319
Plaintiff-Appellee,	:	TRIAL NOS. B-0708125
		B-0801815
vs.	:	B-0802346
ROBERT MYNATT,	:	<i>DECISION.</i>
Defendant-Appellant.	:	

Criminal Appeals From: Hamilton County Court of Common Pleas

Judgments Appealed From Are: Affirmed

Date of Judgment Entry on Appeal: March 25, 2011

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Philip R. Cummings*, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Rion, Rion & Rion and *John Paul Rion*, for Defendant-Appellant.

Please note: We have removed this case from the accelerated calendar.

Per Curiam.

{¶1} Defendant-appellant Robert Mynatt appeals from the Hamilton County Common Pleas Court’s judgments overruling his Crim.R. 32.1 motions to withdraw his guilty pleas. We affirm the court’s judgments.

{¶2} In December 2007, in the case numbered B-0708125, Mynatt was found guilty and sentenced to community control upon his guilty plea to having weapons under a disability. In June 2008, he was convicted upon guilty pleas, in the case numbered B-0801815, to felonious assault, domestic violence, and abduction, and, in the case numbered B-0802346, to having weapons under a disability and marijuana trafficking. And based on his 2008 convictions, he was convicted upon his guilty plea to violating the community-control sanction imposed in the case numbered B-0708125.

{¶3} Mynatt took no direct appeals from his convictions. Instead, in December 2009, he filed in each case a Crim.R. 32.1 motion to withdraw his guilty pleas. The common pleas court overruled the motions.

I. The Assignments of Error

{¶4} On appeal, Mynatt presents two assignments of error, challenging the common pleas court’s exercise of its discretion in overruling his Crim.R. 32.1 motions without an evidentiary hearing. The challenge is untenable.

{¶5} A court may grant a postsentence motion to withdraw a guilty plea only upon a showing of a “manifest injustice.”¹ The defendant bears the burden of establishing a “manifest injustice.”² The decision whether the defendant has

¹ Crim.R. 32.1.

² See *State v. Smith* (1977), 49 Ohio St.2d 261, 361 N.E.2d 1324, paragraph one of the syllabus.

sustained this burden is committed to the sound discretion of the trial court and will not be disturbed on appeal unless the court abused its discretion.³

{¶6} Crim.R. 32.1 does not expressly require a court to hold a hearing on a postsentence motion to withdraw a guilty plea. But this court has effectively adopted a rule that requires a hearing if the facts alleged in the motion, and accepted as true by the court, would require that the plea be withdrawn. The decision to hold a hearing is discretionary with the trial court and may be reversed only if the court abused its discretion.⁴

{¶7} *The grounds for relief.* In his motions, Mynatt advanced two grounds for relief. He claimed that he was actually innocent of the offenses, and that, because he was actually innocent, his trial counsel had been ineffective in investigating his case and in counseling him to plead.

{¶8} A counseled, knowing, voluntary, and intelligent guilty plea constitutes a complete admission of the facts underlying the charged offense and thus effectively removes from the case any issue concerning the defendant's factual guilt of the offense.⁵ Therefore, Mynatt's challenges to his convictions are limited to the knowing, voluntary, or intelligent nature of his guilty pleas.⁶

{¶9} The record shows that the trial court accepted Mynatt's guilty pleas in conformity with Crim.R. 11. Mynatt does not contend otherwise.

³ See *id.*, paragraph two of the syllabus.

⁴ See *State v. Brown*, 1st Dist. No. C-010755, 2002-Ohio-5813.

⁵ See Crim.R. 11(B)(1); *State v. Wilson* (1979), 58 Ohio St.2d 52, 388 N.E.2d 745, paragraph one of the syllabus.

⁶ See *State v. Spates*, 64 Ohio St.3d 269, 272, 1992-Ohio-130, 595 N.E.2d 351, citing *Tollett v. Henderson* (1973), 411 U.S. 258, 267, 93 S.Ct. 1602; accord *State v. Morgan*, 1st Dist. No. C-080011, 2009-Ohio-1370, ¶25.

{¶10} Rather, his claim of actual innocence concerning the weapons-under-a-disability charges may fairly be read to allege that his guilty pleas to the charges had been unknowing and unintelligent because he had mistakenly believed that his wife's ownership of the guns would not have exonerated him. His actual-innocence claim concerning the felonious-assault, domestic-violence, and abduction charges may fairly be read to allege that his guilty pleas to the charges had been unknowing, involuntary, and unintelligent because he had mistakenly believed that his wife would have testified against him at a trial of the charges. And his ineffective-counsel claim may fairly be read to allege that his guilty pleas were the unknowing, involuntary, and unintelligent product of his trial counsel's ineffectiveness in failing to reasonably investigate his case, and in counseling his pleas, upon his protestations of innocence.

{¶11} *The affidavits.* In support of his motions, Mynatt offered two affidavits made by his wife. With respect to the weapons-under-a-disability charges, Mynatt's wife averred that the firearms for which he had been charged had "belong[ed]" to her, that one firearm had been registered to her, and that she had been in the process of registering the other firearm. With respect to the felonious-assault, domestic-violence, and abduction charges, she averred that Mynatt "did not restrain her from leaving the house, * * * punch, bite, or drag her by [her] hair, [or] cause an injury to [her] ankle," but "only * * * pushed [her] onto the sofa, and screamed at [her]." She stated that their "argument" had occurred on a day when she had been "extremely emotional due to [Mynatt's] infidelity and a recent death in the family," that they had "shoved each other," and that, because she had been "wearing heels," she had "injured [her] ankle," requiring Mynatt to "help" her

upstairs to her bed. He did not, she insisted, “prevent [her] from leaving the house, [l]eith[er] physically or verbally.”

{¶12} Mynatt also supported his motions with copies of two letters written by his wife. In her first letter, dated two months after Mynatt’s convictions and addressed to the trial judge, Mynatt’s wife asked that her husband’s six-year prison sentence be “shorten[ed].” She stated that she had had no intention of testifying against him, “since [she] did not want [her] four children’s father in jail.” She stated that, although she had known of the domestic-violence charge, she had not learned of the felonious-assault and abduction charges until a week before the initial court date, and that “arguments where [they] both became physical against each other,” while “common” during their ten-year relationship, had, in the past, resulted only in domestic-violence arrests, not in “any [jail] time.” She asserted that, if she could, she would “take back what [she had] said and accused him of and get counseling instead, so her family would stay intact.” In the second letter, dated a year later and addressed “To Whom It May Concern,” Mynatt’s wife sought his “early release.” She provided further detail concerning her own culpability in their “fight[s]” and her family’s hardships due to her husband’s incarceration.

{¶13} Finally, Mynatt offered a September 2009 letter from a woman claiming to be the mother of another of Mynatt’s children. The letter detailed the hardships experienced by her and her son as a consequence of Mynatt’s incarceration and asked that Mynatt’s case “be looked into.”

Having Weapons Under a Disability

{¶14} In support of his claim of actual innocence concerning the weapons-under-a-disability charges, Mynatt alleged in his motion, and his wife averred in her

affidavits, that she, and not he, had been the registered, or soon-to-be-registered, owner of the firearms for which he had been charged. Thus, Mynatt argued, his guilty pleas to having weapons under a disability had not been knowing or intelligent, because he had not known when he entered his pleas that his wife's ownership of the firearms would have exonerated him of the charges.

{¶15} His argument fails in its central premise. The weapons-under-a-disability charges did not, as Mynatt insisted, require proof that he had owned the weapons; the charges could also have been proved with evidence demonstrating his actual or constructive possession of the weapons.⁷ And Mynatt, by his guilty pleas, had admitted the allegations of his indictments that he had “knowingly * * * *ha[d]*” the weapons.⁸

{¶16} Thus, his guilty pleas to the weapons-under-a-disability charges could not be said to have been the unknowing or unintelligent product of his misunderstanding of the legal significance of his wife's ownership of the guns. And the common pleas court did not abuse its discretion in declining to conduct a hearing or in denying relief on this ground.

Felonious Assault, Domestic Violence, and Abduction

{¶17} Nor did the court abuse its discretion in overruling, or in denying a hearing on, Mynatt's claims of actual innocence concerning the felonious-assault, domestic-violence, and abduction charges.

{¶18} ***The Calhoun factors.*** We note, as a preliminary matter, that for the purpose of determining the need for an evidentiary hearing on an R.C. 2953.21

⁷ See *State v. English*, 1st Dist. No. C-080872, 2010-Ohio-1759, ¶31-32; *State v. Bailey*, 1st Dist. Nos. C-060089 and C-060091, 2007-Ohio-2014, ¶36-39.

⁸ See R.C. 2923.13(A) (emphasis added).

petition for postconviction relief, the Ohio Revised Code provides a standard similar to the judicially developed standard for determining the need for an evidentiary hearing on a Crim.R. 32.1 motion.⁹ And in *State v. Calhoun*,¹⁰ the Ohio Supreme Court set forth factors for a common pleas court to consider in assessing the credibility of affidavits submitted in support of, and thus in determining the need for an evidentiary hearing on, a postconviction petition.

{¶19} The supreme court in *Calhoun* stated that the common pleas court must accord such affidavits “due deference,” but that the court “may, in the sound exercise of discretion, judge their credibility,” and that the court “may, under appropriate circumstances * * *, deem affidavit testimony to lack credibility without first observing or examining the affiant.”¹¹ In determining whether, in a “so-called paper hearing,” to “accept * * * affidavits as true statements of fact,”¹² or to instead discount their credibility, the common pleas court must consider “all relevant factors,” including “(1) whether the judge reviewing the postconviction relief petition also presided at the [proceedings below], (2) whether multiple affidavits contain nearly identical language, or otherwise appear to have been drafted by the same person, (3) whether the affidavits contain or rely on hearsay, (4) whether the affiants are relatives of the petitioner, or otherwise interested in the success of the petitioner’s efforts, * * * (5) whether the affidavits contradict evidence proffered by the defense [in the proceedings below],” (6) whether the affidavits are “contradicted

⁹ See R.C. 2953.21(C) and (E) (providing that a postconviction claim is subject to dismissal without a hearing if the petitioner has failed to submit with his petition evidentiary material setting forth sufficient operative facts to demonstrate substantive grounds for relief, and that a hearing is required if “the petition and the files and records of the case show the petitioner is entitled to relief”).

¹⁰ 86 Ohio St.3d 279, 1999-Ohio-102, 714 N.E.2d 905.

¹¹ Id. at 284.

¹² Id.

by” the other sworn statements of the affiants, and (7) whether the affidavits are “internally inconsistent.”¹³

{¶20} The supreme court declared that the *Calhoun* analysis was “supported by common sense” and advanced “the interests of eliminating delay and unnecessary expense[] and furthering the expeditious administration of justice.”¹⁴ Those same interests would be served by applying the *Calhoun* factors to assess the credibility of affidavits submitted in support of, and thus to determine the need for an evidentiary hearing on, a Crim.R. 32.1 motion to withdraw a plea. We, therefore, join those appellate districts that have adopted the *Calhoun* analysis for that purpose.¹⁵

{¶21} In the proceedings below, the judge reviewing Mynatt’s Crim.R. 32.1 motion had also presided at his plea and sentencing hearings. Mynatt’s wife was, of course, related to him, and her letters, which detailed the impact of his incarceration on their family, disclosed her substantial interest in his release. She was present at the plea hearing on the felonious-assault, domestic-violence, and abduction charges, but she did not dispute the assistant prosecuting attorney’s statement that she (Mynatt’s wife) was “in agreement with the plea[s].” And she stood mute during the assistant prosecuting attorney’s statement of the facts underlying the charges, thus acquiescing in Mynatt’s admissions, by virtue of his guilty pleas, that he had “restrained the liberty of his wife * * * under circumstances which created a risk of physical harm * * * or placing [her] in fear,” and that he had “caused serious physical

¹³ Id. at 284-285.

¹⁴ Id. at 284.

¹⁵ See, e.g., *State v. Spencer*, 8th Dist. No. 92992, 2010-Ohio-1667, ¶21; *State v. Hoffman*, 2nd Dist. No. 2006 CA 19, 2006-Ohio-6119, ¶36; *State v. Robinson* (Sept. 30, 2005), 11th Dist. No. 2003-A-0125, ¶28; *State v. Garn*, 5th Dist. No. 02 CA 45, 2003-Ohio-820, ¶31.

harm * * * by punching her in the face, dragging [her] by her hair, and biting [her] and twisting [her] ankle causing her to sustain a fractured ankle.”

{¶22} In her letter to the trial court, sent two months after his convictions, Mynatt’s wife effectively admitted that she had “accused him” of the conduct giving rise to the felonious-assault, domestic-violence, and abduction charges. But in her affidavits, made over a year after his convictions, she disavowed those accusations, asserting that Mynatt had not prevented her from leaving the house, punched her, bitten her, dragged her by the hair, or broken her ankle. Viewed in the context of the record as a whole, her disavowal in her affidavits of the accusations underlying the assault, domestic-violence, and abduction charges may fairly be perceived as an effort designed not to correct the “manifest injustice” wrought by Mynatt’s convictions, but to secure his early release and thereby alleviate the hardships caused by his incarceration. Thus, the common pleas court could properly have discounted the credibility of the affidavits.

{¶23} And in the absence of credible evidence demonstrating Mynatt’s claims that his guilty pleas to felonious assault, domestic violence, and abduction had been unknowing, involuntary, or unintelligent, the common pleas court did not abuse its discretion in declining to conduct a hearing or in denying relief on this ground.

Ineffective Assistance of Trial Counsel

{¶24} Finally, Mynatt asserted in his motion that his guilty pleas were the unknowing and unintelligent product of his trial counsel’s ineffectiveness in investigating his case and in counseling his pleas. A defendant who seeks to withdraw a guilty plea on the ground that the plea was the involuntary, unknowing, or unintelligent product of his counsel’s ineffectiveness must show, “first, * * * that

counsel's performance was deficient,"¹⁶ and, second, "that there is a reasonable probability that, but for counsel's [deficient performance, the defendant] would not have pleaded guilty and would have insisted on going to trial."¹⁷

{¶25} On the record before us, we cannot say that trial counsel violated a substantial duty to Mynatt, when counsel's investigation in the case was not demonstrably inadequate, and when he recommended that Mynatt, in lieu of pursuing baseless legal theories or less-than-credible claims of innocence, plead guilty to the charged offenses in exchange for substantially reduced sentences of confinement. Therefore, the common pleas court did not abuse its discretion in declining to hold a hearing or in denying relief on this ground.

II. We Affirm

{¶26} We thus concur with the common pleas court's conclusion, implicit in its overruling of his Crim.R. 32.1 motions, that Mynatt had failed to sustain his burden of demonstrating that withdrawal of the pleas on the grounds advanced was necessary to correct a manifest injustice. We, therefore, hold that the court did not abuse its discretion in overruling the motions without an evidentiary hearing. Accordingly, we overrule the assignments of error and affirm the court's judgments.

Judgments affirmed.

DINKELACKER, P.J., HENDON and FISCHER, JJ.

Please Note:

The court has placed of record its own entry in this case on the date of the release of this decision.

¹⁶ *Strickland v. Washington* (1984), 466 U.S. 668, 687, 104 S.Ct. 2052.

¹⁷ *Hill v. Lockhart* (1985), 474 U.S. 52, 59, 106 S.Ct. 366; see *State v. Xie* (1992), 62 Ohio St.3d 521, 524, 584 N.E.2d 715.