

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Julie A. Edwards, P.J.
	:	John W. Wise, J.
Plaintiff-Appellee	:	Patricia A. Delaney, J.
	:	
-vs-	:	Case No. 09 CA 100
	:	
	:	
CLYDE E. HAYNIE, III	:	<u>OPINION</u>
	:	
Defendant-Appellant	:	

CHARACTER OF PROCEEDING: Criminal Appeal from Licking County Court of Common Pleas Case No. 08 CR 419

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: June 28, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Edwards, P.J.

{¶1} Appellant, Clyde E. Haynie, III, appeals a judgment of the Licking County Common Pleas Court overruling his motion to withdraw his plea of no contest. Appellee is the State of Ohio.

STATEMENT OF FACTS AND CASE

{¶2} On June 20, 2008, the Licking County Grand Jury indicted appellant with engaging in a pattern of corrupt activity (R.C. 2923.32(A)(1)), grand theft in an amount over \$100,000.00 (R.C. 2913.02(A)(3)), receiving stolen property (R.C. 2913.51(A)), two counts of possession of criminal tools (R.C. 2923.24(A)), two counts of forgery (R.C. 2913.31(A)(1),(2), and/or(3), and R.C. 2913.31(B)(1)), complicity to identity fraud (R.C. 2913.49(C)), two counts of child endangering (R.C. 2919.22(A)), and two firearm specifications (R.C. 2929.14(D) and R.C. 2941.141).

{¶3} Appellant entered a plea of no contest to the charges on April 27, 2009, pursuant to a negotiated plea. He was sentenced on April 28, 2009, to eight years incarceration and ordered to pay restitution in the amount of \$197,340.26.

{¶4} On July 8, 2009, appellant filed a pro se motion to withdraw his guilty plea. In his motion, he alleged that the court did not explain that his plea of no contest waived his right to challenge venue. He also argued counsel was ineffective because if counsel “would of challenged venue and other factors, such as, the Degree of the Theft, Forgery, taking Identity of Another, and the fact that Defendant could of never been found guilty of a Gun Specification, when a gun wasn’t brandished or used to commit an offense, the out-come and results would have been 100% different.” Motion to Withdraw Plea, July 8, 2009. Appellant further alleged that counsel was ineffective for

failing to request a pre-sentence investigation. The court overruled the motion without an evidentiary hearing. Appellant assigns a single error on appeal:

{¶5} “THE TRIAL COURT’S DECISION TO DENY THE DEFENDANT’S MOTION TO WITHDRAW HIS GUILTY PLEA WAS IN ERROR AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.”

{¶6} Appellant argues that his plea was involuntary because the transcript of the hearing reflects that he did not understand the nature of the charges against him, specifically the firearm specifications and the child endangering charges. He also argues he only entered the plea because he was told he would receive a sentence of 25 years incarceration if he went to trial.

{¶7} Crim. R. 32.1 governs the withdrawal of a guilty or no contest plea and states: “[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.” Because appellant's request was made post-sentence, the standard by which the motion was to be considered was “to correct manifest injustice.” The accused has the burden of showing a manifest injustice warranting the withdrawal of a plea. *State v. Smith* (1977), 49 Ohio St.2d 261, 361 N.E.2d 1324, paragraph one of the syllabus. Further, a reviewing court will not disturb a trial court's decision whether to grant a motion to withdraw a plea absent an abuse of discretion. *State v. Caraballo* (1985), 17 Ohio St.3d 66, 477 N.E.2d 627. In order to find an abuse of discretion, the reviewing court must determine that the trial court's decision was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 450 N.E.2d 1140.

{¶8} We first note that the grounds for withdrawing his plea now raised by appellant were not raised in his motion to withdraw his plea. In fact, after arguing ineffective assistance of counsel as grounds for his motion in the trial court, appellant now expressly states in his brief that he is not arguing that counsel was ineffective, but only arguing that he did not fully understand the nature of all the charges or his rights in the plea proceeding. Appellant's Brief, p. 8. It is axiomatic that the failure to raise an issue in the trial court waives the right to raise the issue on appeal. *State v. Williams* (1977), 51 Ohio St.2d 112, 364 N.E.2d 1364, ¶ 1 of the syllabus, overruled on other grounds (1988), 40 Ohio St.3d 226.

{¶9} Further, the doctrine of res judicata prohibits a defendant from raising claims in a Crim. R. 32.1 motion to withdraw a plea which were raised or could have been raised in prior proceedings. *State v. Kimbrough*, Licking App. No. 07-CA-44, 2008-Ohio-4363, ¶24, citing *State v. Young*, 4th Dist. No. 03CA782, 2004-Ohio-2711. Appellant now argues that the transcript of the plea hearing demonstrates that his plea was not voluntary because he did not understand the nature of the charges, a claim which could have been raised on direct appeal. Appellant's claim is therefore barred by res judicata.

{¶10} Moreover, the record does not support appellant's claims. Nothing in the record demonstrates that he was coerced into entering a plea because he was told he would receive 25 years incarceration if he went to trial rather than eight pursuant to the plea agreement. The affidavit attached to appellant's motion addresses only the issue of venue, and there is no evidence to support his claim of coercion.

{¶11} Further, the transcript of the plea hearing demonstrates that appellant did not lack understanding of the charges against him, but merely disagreed with whether he should be subject to the firearm specifications and child endangering charges:

{¶12} “Q. Did you discuss all the charges and the specifications with your attorney?”

{¶13} “A. Yes, sir.

{¶14} “Q. And did she explain them to you?”

{¶15} “A. Yes, sir.

{¶16} “Q. Did you understand them?”

{¶17} “A. Yes, sir.

{¶18} “Q. Have any questions about the charges?”

{¶19} “A. No, sir.

{¶20} “Q. Or the specifications?”

{¶21} “A. No, sir. Tr. 5.

{¶22} “Q. (By the Court) Mr. Haynie, do you agree with the facts as presented?”

{¶23} “A. Honestly, sir, not all of them, but.

{¶24} “Q. Did you wish to, with the advice of counsel, clear up the disagreements on the record at this time?”

{¶25} “A. As far as the gun spec charges are concerned, I had - - I thought I was under the impression that gun specifications mean that you - - you have a gun illegally. The guns that I purchased were purchased legally. They say the reason why I (sic) charged with the gun specification is because Detective Bell here quote unquote said who’s to say that you weren’t holding people at gunpoint. I disagree with that.

{¶26} “The child endangerment thing, I asked what that was about. You know, I loved Elise, Erica Loved Elise, but they say because she was present while they did a police raid, that’s why the child endangerment.

{¶27} “Actually, there’s a lot more, but I know that I waived my rights, I guess, to talk about that, so.

{¶28} “Q. Well, your perception of the firearm specification is a common one. It is not the illegal purchase. It is possession of a firearm during the commission of an offense that creates this offense. Do you understand that?

{¶29} “A. Yes, Your Honor, but - - but, honestly, under oath, none of those guns that I had were even fired. If Detective Bell and all them - -

{¶30} “Q. That’s not - - that’s not at issue.

{¶31} “A. Yes, sir.

{¶32} “Q. And that’s not what you’re charged with. Had they been fired, I’m sure that the charges would have been quite different.

{¶33} “A. Yes, Your Honor.

{¶34} “Q. But did you discuss this with your attorney?

{¶35} “A. Oh, yes, Your Honor. The only reason why I was just talking about it right now because you asked me if I was - - if I agreed with everything, you know. That was it.

{¶36} “Q. And your attorney did explain all of this to you?

{¶37} “A. Yes, Your Honor. I was just, you know, expressing that because you asked me.” Tr. 15-17.

{¶38} It is apparent from the record that the court ensured that appellant understood the charges and the specifications. The court cleared up appellant's misconceptions regarding whether the firearms must be purchased illegally and whether they must be fired in order to support the firearm specification, and appellant acknowledged that he understood. Appellant did not claim that he did not understand the child endangering charge, he only expressed that he loved the child in question. The record does not demonstrate that the court abused its discretion in overruling his motion to withdraw his plea. The record does not support appellant's claim that withdrawal of his no contest plea was necessary to correct a manifest injustice.

{¶39} The assignment of error is overruled.

{¶40} The judgment of the Licking County Common Pleas Court is affirmed.

By: Edwards, P.J.

Wise, J. and

Delaney, J. concur

s/Julie A. Edwards

s/John W. Wise

s/Patricia A. Delaney

JUDGES

JAE/r0408

