

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2010-06-059
- vs -	:	<u>OPINION</u>
	:	3/21/2011
SHELTON GUZMAN-MARTINEZ,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 06CR23553

David P. Fornshell, Warren County Prosecuting Attorney, Michael Greer, 500 Justice Drive, Lebanon, Ohio 45036, for plaintiff-appellee

Darin S. Barber, 12 East Warren Street, Lebanon, Ohio 45036, for defendant-appellant

RINGLAND, J.

{¶1} Defendant-appellant, Shelton Guzman-Martinez, appeals from the decision of the Warren County Court of Common Pleas denying his motion to withdraw his guilty plea. For the reason outlined below, we affirm.

{¶2} On September 11, 2006, appellant, who is not a United States citizen, was indicted on one count of trafficking in cocaine in violation of R.C. 2925.03(A)(2) and one count of possession of cocaine in violation of R.C. 2925.11(A), both first-degree felonies. The indictment also included a major drug-offender specification as defined in

R.C. 2941.1410(A).

{¶3} On November 14, 2006, after entering into a plea agreement, appellant pled guilty to one count of possession of cocaine, was sentenced to serve eight years in prison, and ordered to pay a \$10,000 fine. The remaining trafficking charge, as well as the major drug-offender specification, were both dismissed.

{¶4} On January 4, 2010, appellant filed a pro se "Motion to Re-Address Guilty Plea and Conviction" requesting the court "to permit him to withdraw his guilty plea pursuant to Crim. Rule 32." In his accompanying memorandum, although not particularly clear, appellant argued that he should be entitled to withdraw his guilty plea because he received ineffective assistance of counsel when his trial counsel failed "to raise the Doctrine of Merger on all counts of the indictment," failed to undertake a reasonable investigation, and failed to develop a trial strategy. Appellant also argued, without any further explanation, that he received ineffective assistance of counsel because his trial counsel "had a possible conflict of interest." Appellant, however, did not argue that his trial counsel was ineffective for failing to properly inform him of the consequences his guilty plea would have on his immigration status.

{¶5} On February 4, 2010, the trial court denied appellant's motion to withdraw his guilty plea. Thereafter, appellant filed a letter referencing his motion to withdraw his guilty plea. The trial court, treating appellant's letter as a renewal of his motion, again denied appellant's motion to withdraw his guilty plea on April 5, 2010.

{¶6} Appellant now appeals from the trial court's decision denying his motion to withdraw his guilty plea, raising one assignment of error for review.

{¶7} "THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT WHEN IT DENIED HIS MOTION TO WITHDRAW HIS GUILTY PLEA WITHOUT HOLDING A HEARING."

{¶8} In his single assignment of error, appellant argues that the trial court erred by denying his motion to withdraw his guilty plea without first holding a hearing. In support of his argument, appellant claims that "it is clear that defense counsel failed to give him correct advice as to the deportation consequences" of his guilty plea, and therefore, "the trial court should have held a hearing to determine whether [he] was prejudiced by defense counsel's deficient performance." Appellant, however, did not raise this issue with the trial court.

{¶9} It is well-settled that issues not raised in the trial court may not be raised for the first time on appeal. *State v. Abney*, Warren App. No. CA2004-02-018, 2005-Ohio-146, ¶17, citing *State v. Awan* (1986), 22 Ohio St.3d 120, 122; *State v. Childs* (1968), 14 Ohio St.2d 56, paragraph three of the syllabus. In turn, because appellant did not raise this issue in his motion to withdraw his guilty plea, the matter is waived and we need not consider it for the first time on appeal. See, e.g., *State v. Muhamed*, Franklin App. No. 09AP-936, 2010-Ohio-3968, ¶9. Accordingly, appellant's sole assignment of error is overruled.

{¶10} Judgment affirmed.

HENDRICKSON, P.J., and PIPER, J., concur.