

[Cite as *State v. Dobson*, 2005-Ohio-123.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 20389
v.	:	T.C. CASE NO. 02 CR 3373
	:	
DONN DOUGLAS DOBSON	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

OPINION

Rendered on the 14th day of January, 2005.

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FREDERICK N. YOUNG, J.

{¶ 1} Donn Douglas Dobson is appealing from the decision of the trial court denying both his motion to withdraw his guilty plea and his motion for post conviction

relief.

{¶ 2} Dobson had originally pled guilty to rape, but he was permitted to withdraw that plea because the court had failed to advise him of the mandatory nature of the sentence for that crime. After being so advised, however, he once again entered a guilty plea to the rape charge, as well as to a charge of domestic violence, for which he was duly sentenced and also classified as a sexual predator. He did not file a direct appeal from his convictions.

{¶ 3} Subsequently, he filed his motions to withdraw his guilty plea and to vacate his sentence pursuant to the post conviction relief statute. The trial court overruled his request for post conviction relief on the grounds that it was untimely filed, and also overruled the motion to withdraw the guilty plea on the grounds that Dobson failed to demonstrate that manifest injustice occurred. It is these rulings that are on appeal.

{¶ 4} The appellant, through counsel, presents the following two assignments of error:

{¶ 5} “1. THE TRIAL COURT MISCALCULATED THE NUMBER OF DAYS ELAPSED AND ERRED IN DISMISSING APPELLANT’S PETITION FOR POST CONVICTION RELIEF FOR UNTIMELINESS.

{¶ 6} “2. A PLEA THAT IS NOT MADE KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY DUE TO INEFFECTIVE ASSISTANCE OF COUNSEL IS UNCONSTITUTIONAL UNDER THE U.S. AND OHIO CONSTITUTIONS.”

{¶ 7} As to the first assignment, the State concedes, and we agree, that the trial court miscalculated the lapsed days from the termination entry and erred in finding the

petition untimely. We agree and sustain the first assignment of error.

{¶ 8} In his second assignment of error, Dobson argues that his plea, that is, his second plea to the charge of rape, was not knowingly, intelligently and voluntarily made due to ineffective assistance of counsel. As the State points out, however, we must presume the regularity of the plea proceedings because Dobson, as appellant, failed to ensure that a record of the plea hearings were made a part of the record on appeal. *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199.

{¶ 9} The question then becomes whether Dobson submitted evidentiary documents containing sufficient operative facts demonstrating his guilty plea was coerced or induced by false promises. He did not do that because he submitted only a self-serving affidavit, which by itself is insufficient to refute the presumption of regularity in his plea proceedings. The trial court dealt with this issue in its decision overruling Dobson's motions, as follows:

{¶ 10} "Irrespective of the courts [sic] findings with regard to the timeliness of Defendant's Petition, the court has considered the merits and substance of Defendant's entire Motion. The court finds, after reviewing all of the evidence, that Defendant has not met his burden of establishing a prima facie case that manifest injustice occurred. The court further finds that Defendant has failed to demonstrate ineffective assistance of counsel that resulted in any manifest injustice herein. The court has reviewed the plea procedure and finds that Defendant, under the totality of the circumstances, subjectively was aware of the effect of entering his plea, that he subjectively was aware of his rights, and that he was aware that he was not eligible for judicial release. The court permitted Defendant to withdraw his original defective plea without qualification.

Defendant was not compelled thereafter to enter his plea, but voluntarily chose to do so after being advised by the court of the circumstances and that he was not eligible for judicial release on the rape offense. After reviewing this matter and all of the facts alleged by Defendant, if this court were to accept the same as true, the court finds that such facts and evidence would not result in manifest injustice. Therefore, the court finds that a hearing on Defendant's Motion is not necessary."

{¶ 11} We find nothing in the record that would refute the trial court's finding that Dobson's second and well-informed at that time plea was knowing and voluntary. The second assignment of error is overruled and the judgment will be affirmed.

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WOLFF, J. and GRADY, J., concur.

Copies mailed to:

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- Hon. Mary Katherine Huffman