

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
FULTON COUNTY

State of Ohio

Court of Appeals No. F-11-001

Appellee

Trial Court No. 92CR000118

v.

Daniel Rittner, Sr.

DECISION AND JUDGMENT

Appellant

Decided: September 30, 2011

* * * * *

Scott A. Haselman, Fulton County Prosecuting Attorney, and
Jon H. Whitmore, Assistant Prosecuting Attorney, for appellee.

Daniel L. Rittner, pro se.

* * * * *

YARBROUGH, J.

{¶ 1} This is an appeal from the judgment of the Fulton County Court of Common Pleas denying defendant-appellant Daniel Rittner, Sr.'s motion to withdraw his guilty plea pursuant to Crim.R. 32.1. We affirm.

{¶ 2} On January 22, 1993, appellant pleaded guilty to two counts of rape in violation of R.C. 2907.02(A)(1)(b), felonies of the first degree. The trial court sentenced appellant to an indefinite term of imprisonment of six to 25 years on each count, to be served concurrently. Appellant did not file a direct appeal of his conviction or sentence.

{¶ 3} Beginning in 2002, appellant has inundated the courts with pro se motions, including several motions to withdraw his guilty pleas pursuant to Crim.R. 32.1. Appellant's first motion to withdraw his guilty pleas was initially denied by the trial court on November 19, 2002. However, in *State v. Rittner*, 6th Dist. No. F-02-034, 2003-Ohio-5201, this court reversed the trial court's decision, holding that the trial court abused its discretion when it summarily dismissed appellant's motion without ruling on its merits. Upon remand, the trial court appointed counsel for appellant and held a hearing on the motion to withdraw the guilty pleas wherein evidence was presented, including appellant's own testimony at the hearing. The main issue in dispute was whether appellant was incompetent at the time of the pleas. Upon consideration of the evidence and the arguments in support and against, the trial court denied appellant's motion to withdraw the guilty pleas in a judgment entry filed on December 30, 2004. This court affirmed the trial court's judgment in *State v. Rittner*, 6th Dist. No. F-05-003, 2005-Ohio-6526, appeal not allowed 109 Ohio St.3d 1424, 2006-Ohio-1967.

{¶ 4} On March 14, 2008, appellant filed a second motion to withdraw his guilty pleas, alleging that he had newly discovered evidence that undermined one of the victims' credibility. The alleged evidence consisted of the first page of a letter from the

prosecuting attorney, which included statements from one of the victims. Appellant viewed those statements as exculpatory. However, in its brief in opposition to appellant's motion, the state provided the full document, which detailed several inculpatory statements made by the defendant in earlier correspondence. The trial court denied this motion on its merits in an April 14, 2008 judgment entry. Appellant failed to timely appeal that judgment.

{¶ 5} On August 23, 2010, appellant filed his third motion to withdraw his guilty pleas. This motion attacked the credibility of documents purportedly relied on by the trial court in its December 30, 2004 judgment that denied appellant's first motion to withdraw his guilty pleas. In addition, as in his second motion to withdraw his guilty pleas, appellant's third motion again challenged the credibility of one of the victims, referencing the same statements of that victim as stated in the letter from the prosecutor. On December 23, 2010, the trial court denied appellant's third motion, citing the doctrine of res judicata. Appellant now appeals from that judgment.

{¶ 6} We note initially that appellant does not present an assignment of error as required by App.R. 16(A)(3). However, based on his arguments, we construe his assignment of error to be that the trial court abused its discretion when it denied his motion to withdraw the guilty pleas.

{¶ 7} Appellant presents five questions in support of the construed assignment of error:

{¶ 8} "I. Whether the trial court abused its discretion when it denied Rittner's withdraw of guilty plea [sic].

{¶ 9} "II. Whether evidentiary hearing and withdraw of guilty plea is required because manifest injustice is demonstrated.

{¶ 10} "III. Whether res judicate [sic] is defeated with the presentation of competent, relevant, and material evidence dehors the record that did not exist until now.

{¶ 11} "IV. Whether evidence of manifest injustice did not previously exist.

{¶ 12} "V. Whether the claims of manifest injustices now submitted to the trial court in withdraw of guilty plea have not been definitively settled."

{¶ 13} Because appellant's questions are interrelated, we will address them simultaneously.

{¶ 14} A postsentence motion to withdraw a guilty plea is governed by Crim.R. 32.1, which states that a court may grant such motion and set aside the judgment of conviction "to correct manifest injustice." The burden of demonstrating that manifest injustice exists falls on the defendant. *State v. Smith* (1977), 49 Ohio St.2d 261, paragraph one of the syllabus. Although "manifest injustice" is not precisely defined, "it is clear that under such standard, a postsentence withdrawal motion is allowable only in extraordinary cases." *Id.* at 264. Moreover, "[t]he motion is addressed to the sound discretion of the trial court, and the good faith, credibility and weight of the movant's assertions in support of the motion are matters to be resolved by that court." *Id.* Accordingly, we review a trial court's denial of a motion to withdraw a guilty plea under

an abuse of discretion standard. *State v. Xie* (1992), 62 Ohio St.3d 521, 526. An abuse of discretion "connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶ 15} Appellant's motion to withdraw his guilty pleas makes claims that attack both the trial court's December 30, 2004 judgment regarding his competency at the time of his pleas, and the credibility of one of the victims. The state argues that appellant's motion is barred by the doctrine of res judicata. We agree.

{¶ 16} Res judicata "serves to preclude a defendant who has had his day in court from seeking a second on that same issue. In so doing, res judicata promotes the principles of finality and judicial economy by preventing endless relitigation of an issue on which a defendant has already received a full and fair opportunity to be heard." *State v. Saxon*, 109 Ohio St.3d 176, 2006-Ohio-1245, ¶ 18.

{¶ 17} As to the claims regarding the issue of his competency when entering the pleas, that issue has already been fully litigated and decided by the trial court, and affirmed by this court in *State v. Rittner*, 6th Dist. No. F-05-003, 2005-Ohio-6526. Similarly, the claims regarding the credibility of one of the victims was decided by the trial court in its April 14, 2008 judgment, from which appellant failed to timely appeal. Therefore, we hold that the trial court did not abuse its discretion when it denied appellant's third motion to withdraw his guilty pleas based on the doctrine of res judicata.

{¶ 18} Accordingly, appellant's construed assignment of error is not well-taken.

{¶ 19} For the foregoing reasons, the judgment of the Fulton County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

{¶ 20} It is so ordered.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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