

[Cite as *State v. Block*, 2009-Ohio-2713.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 91417 and 91418

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

LAVELLE BLOCK

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-422157, CR-425349, CR-425805,
CR-427553, CR-427926, and CR-430337

BEFORE: McMonagle, J., Rocco, P.J., and Boyle, J.

RELEASED: June 11, 2009

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

CHRISTINE T. McMONAGLE, J.:

{¶ 1} Defendant-appellant, Lavelle Block, appeals the trial court's February 4, 2008 judgment denying his motion to vacate his pleas. We affirm.

{¶ 2} Block was charged with numerous criminal offenses (mostly drug-related) in six separate cases. The cases were consolidated, and in January 2003, Block pleaded guilty to some of the charges in exchange for dismissal of the remaining charges. After sentencing, Block filed a motion to vacate his pleas, which the trial court denied. This appealed followed.

{¶ 3} In his sole assignment of error, Block contends that the trial court abused its discretion by denying his motion to vacate because the court failed to strictly comply with Crim.R. 11. Specifically, Block contends that the trial court failed to advise him of his right to counsel.

{¶ 4} Crim.R. 32.1 governs withdrawal of guilty pleas and provides:

{¶ 5} "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."

{¶ 6} The decision to grant or deny a motion to withdraw a guilty plea lies within the sound discretion of the trial court. *State v. Smith* (1977), 49 Ohio St.2d 261, 264, 361 N.E.2d 1324. "Thus, unless it is shown that the trial court

acted unjustly or unfairly, there is no abuse of discretion. *** One who enters a guilty plea has no right to withdraw it. It is within the sound discretion of the trial court to determine what circumstances justify granting such a motion.” *State v. Peterseim* (1980), 68 Ohio App.2d 211, 214, 428 N.E.2d 863, quoting *Barker v. United States* (C.A.10, 1978), 579 F.2d 1219, 1223.

{¶ 7} Because Block’s motion was post-sentence, he had to show that his motion to withdraw his pleas of guilty was to correct a “manifest injustice.” A post-sentence motion to vacate a plea is only permitted in extraordinary cases because the “accused might be encouraged to plead guilty to test the weight of potential punishment, and withdraw the plea if the sentence were unexpectedly severe.” *Peterseim* at 213.

{¶ 8} The underlying purpose of Crim.R. 11(C) is for the court to give enough information to a defendant to allow him to make an intelligent, voluntary, and knowing decision regarding whether to plead guilty. See *State v. Ballard* (1981), 66 Ohio St.2d 473, 480, 423 N.E.2d 115. Courts have divided Crim.R. 11 rights into constitutional and nonconstitutional rights. Concerning the constitutional rights, courts must strictly comply with Crim.R. 11 mandates; for the nonconstitutional rights, the standard is substantial compliance. *State v. Stewart* (1977), 51 Ohio St.2d 86, 93, 364 N.E.2d 1163. Substantial compliance means that “if under the totality of the circumstances it is apparent the defendant subjectively understood the implications of his plea, the plea should

not be vacated.” *State v. Scruggs*, Cuyahoga App. No. 83863, 2004-Ohio-3732, ¶10.

{¶ 9} This court has held that Crim.R. 11 does not require a court to advise a defendant of the right to retained or appointed counsel if the defendant already has counsel. *State v. Jones*, Cuyahoga App. No. 89499, 2008-Ohio-802, ¶4; *State v. Hitchcock*, Cuyahoga App. No. 88896, 2007-Ohio-5059, ¶19; *State v. Gooch*, 162 Ohio App.3d 105, 2005-Ohio-3476, ¶8, 832 N.E.2d 821, citing *State v. Wood* (Sept. 19, 1996), Cuyahoga App. No. 70150.

{¶ 10} Block was represented by counsel at his plea hearing, counsel and the court had a short colloquy on the record, and when the court asked Block if he was satisfied with his lawyer’s representation, he answered affirmatively. Accordingly, we find that Block’s argument that the court violated Crim.R. 11 by failing to advise him of his right to counsel is without merit.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

CHRISTINE T. McMONAGLE, JUDGE

**KENNETH A. ROCCO, P.J., and
MARY J. BOYLE, J., CONCUR**