

IN THE OHIO SUPREME COURT

11-1808

STATE OF OHIO

Appellee,

-vs-

JEFFREY ULERY

Appellant.

\* On Appeal from the Second District  
\* Court of Appeals, Clark County, Ohio  
\*  
\*  
\* Court of Appeals Case No. 2010 CA 89  
\*  
\*  
\*  
\*

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT JEFFREY ULERY

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**I. EXPLANATION OF WHY THE SUPREME COURT OF OHIO SHOULD EXERCISE JURISDICTION OVER THIS DISCRETIONARY APPEAL**

This discretionary appeal is from a felony conviction. The main issue presented to this Court is whether Appellant was denied his due process rights when the Trial Court denied his Motion to Withdraw his Pleas without conducting a hearing.

The Second District Court of Appeals affirmed the Trial Court's decision because the Appellate Court determined that the issues of ineffective assistance of counsel and whether Appellant's pleas were knowingly, intelligently, and voluntarily made were previously addressed by the Court of Appeals in State v. Ulery, *Clark App. No. 2009 CA 5, 2010 Ohio 376*.

While it is true that the issues of ineffective assistance of counsel and whether the pleas were knowingly, intelligently and voluntarily made were previously addressed by the Appellate Court, Appellant's Motion to Withdraw his Pleas set forth different issues with regard to ineffective assistance of counsel and the plea itself which were not addressed in the previous appeal and could not be as they were not part of the record before the Court of Appeals.

Normally arguments which use evidence outside of the record are the subject of a post conviction motion for relief and not a Motion to Withdraw a Plea. See **Ohio Revised Code 2953.21; State v. Turner, 171 Ohio App. 3d 82 (2<sup>nd</sup> Dist. 2007)**. The Ohio Supreme Court has distinguished between Ohio Rule of Criminal Procedure 32.1 and Ohio Revised Code 2953.21 remedies. **State v. Bush, 96 Ohio St. 3d 235 (2002); citing State ex rel. Tran. V. McGrath, 78 Ohio St. 3d 45, 47 (1997)**. However, ineffective assistance of counsel is a proper basis for a post sentence Motion to Withdraw a Plea. **State v. Dalton, 153 Ohio App. 3d 286 (2003); State v. Turner, 171 Ohio App. 3d 82 (2<sup>nd</sup> Dist. 2007)**.

In Turner, the Second District Court of Appeals went on to state "Clearly, if defendant was denied an opportunity to present a self-defense claim at trial because of his trial counsel's erroneous advice that defendant was not entitled to assert that defense, the trial court would be obligated to permit withdrawal of defendant's guilty plea because counsel's deficient performance created a manifest injustice by impairing the knowing, intelligent, and voluntary character of defendant's plea." See State v. Turner, 171 Ohio App. 3d 82 (2<sup>nd</sup> Dist. 2007). Ineffective assistance of counsel is a basis for seeking a post sentence withdrawal of a guilty plea. State v. Turner, 175 Ohio App. 3d 250 (2008); State v. Dalton, 153 Ohio App. 3d (2003).

Appellant filed his Motion to Withdraw his Guilty Plea and attached a supporting affidavit. In such affidavit Appellant alleges that his Trial Counsel was ineffective for including, but not limited to, not presenting the self defense of entrapment. See Motion to Withdraw Guilty Plea Supporting Affidavit p1, (hereinafter "Affidavit"). The argument with regard to ineffective assistance counsel is set forth below. The arguments set forth herein were not previously presented to the Court of Appeals nor could they be as they were based on facts outside the original record of appeal, and thus the Court of Appeals erred by categorizing all of Appellant's arguments as barred by res judicata.

With regard to the hearing itself, Ohio Rule of Criminal Procedure 32.1 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."

A defendant who seeks to withdraw a plea of guilty after the imposition of sentence has the burden of establishing the existence of manifest injustice. State v. Smith, 49 Ohio St. 2d 261

(1979). The decision of whether a manifest injustice occurred rests with the sound discretion of the trial court. State v. Smith, 49 Ohio St. 2d 261. "Abuse of Discretion" is more than mere error of law and/or judgment; it implies an arbitrary, unreasonable, and/or unconscionable attitude on the part of the Trial Court. State v. Adams, 62 Ohio St. 2d 151 (1980).

This Court has held that unless denial of the motion to withdraw is clearly warranted, a trial court should conduct a hearing. State v. Xie, 62 Ohio St. 3d 521 (1992); see State v. Francis, 104 Ohio St. 3d 490 (2004). "A hearing on a post-sentence Crim. R. 32.1 motion is not required if the facts alleged by the defendant and accepted as true by the trial court would not require the court to permit a guilty plea to be withdrawn." State v. Wynn, 131 Ohio App. 3d 725 (1998); State v. Blatnik, 17 Ohio App. 3d 201 (1984).

As is demonstrated below, Appellant demonstrated facts which if accepted a true would be grounds for Appellant to withdraw his former pleas based on ineffective assistance of counsel. Consequently, the Trial Court should have conducted a hearing in this matter as a denial of Appellant's Motion to Withdraw was not clearly warranted.

Therefore, for the foregoing reasons, the facts set forth below, and the evidence presented in support of Appellant's Motion to Withdraw of his Pleas, the Supreme Court should exercise its discretion and accept jurisdiction over this matter as the Trial Court and the Appellate Court have created a grave injustice by not allowing Appellant's Motion to Withdraw his Pleas to be heard on the merits.

## II. STATEMENT OF CASE AND FACTS

On April 8, 2008, Appellant was indicted on two counts of Conspiracy to Commit Aggravated Murder and one count of Attempted Aggravated Murder.

On December 18, 2008, a jury trial had commenced, but prior to the completion of such

jury trial a plea agreement was reached and Appellant pled guilty to one count of Conspiracy to Commit Aggravated Murder and was sentenced to four years of incarceration.

A timely Notice of Appeal was filed on January 12, 2009. On April 30, 2010, the Appellate Court rendered a final decision denying Appellant's appeal, and an appeal was filed in the Ohio Supreme Court on June 7, 2010. On August 25, 2010, the Ohio Supreme Court dismissed Appellant's case as the appeal did not involve a substantial constitutional question.

On June 29, 2009, November 18, 2009, February 24, 2010, and March 18, 2010, Appellant filed separate motions for judicial release. Appellant also filed a Motion for Leave to Withdraw his Guilty Plea. On April 30, 2010, the Appellate Court rendered a final decision denying Appellant's appeal, and an appeal was filed in the Ohio Supreme Court. Appellant also filed a Post Conviction Motion for Relief on January 7, 2010, and such petition is still pending in the Trial Court.

On August 23, 2010, more than a year after Appellant filed his initial Motion for Judicial Release; the Trial Court rendered a decision denying all of the above-referenced motions without a hearing.

On September 15, 2010, Appellant filed a timely notice of appeal in the Second District Court of Appeals. On December 15, 2010, the Appellate Court issued a decision limiting this appeal to the Trial Court's denial of Appellant's motion for leave to withdraw his guilty plea.

Thereafter on September 9, 2011, the Second District Court of Appeals rendered a decision affirming the Trial Court's Decision and denying Appellant's appeal. It is this decision which is the basis of this appeal.

**III. ARGUMENT IN SUPPORT OF PROPOSITION OF LAW: The Trial Court and Court of Appeals erred in denying Appellant's Motion to Withdraw His Pleas as Appellant presented evidence in support of his motion which demonstrated that Appellant should have been allowed to withdraw his pleas**

On August 23, 2010, the Trial Court denied Appellant's Motion to Withdraw his Guilty Plea, without a hearing. See Trial Court's August 23, 2010 Entry. The Appellate Court affirmed the Trial Court's decision and also determined that Appellant's arguments were barred by res judicata because they were previously addressed. See September 9, 2011 Court of Appeals Decision.

Normally arguments which use evidence outside of the record are the subject of a post conviction motion for relief and not a Motion to Withdraw a Plea. See Ohio Revised Code 2953.21; State v. Turner, 171 Ohio App. 3d 82 (2<sup>nd</sup> Dist. 2007). The Ohio Supreme Court has distinguished between Ohio Rule of Criminal Procedure 32.1 and Ohio Revised Code 2953.21 remedies. State v. Bush, 96 Ohio St. 3d 235 (2002); citing State ex rel. Tran. V. McGrath, 78 Ohio St. 3d 45, 47 (1997). However, ineffective assistance of counsel is a proper basis for a post sentence Motion to Withdraw a Plea. State v. Dalton, 153 Ohio App. 3d 286 (2003); State v. Turner, 171 Ohio App. 3d 82 (2<sup>nd</sup> Dist. 2007).

As was stated above, while it is true that the issue of ineffective assistance of counsel was previously addressed by the Court of Appeals, the issues with regard to ineffective assistance of counsel set forth in Appellant's Motion to Withdraw his Pleas were not previously addressed as such issues were not part of the record and were reviewable in consideration of a Motion to Withdraw Plea.

Ohio Rule of Criminal Procedure 32.1 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."

A defendant who seeks to withdraw a plea of guilty after the imposition of sentence has the burden of establishing the existence of manifest injustice. State v. Smith, 49 Ohio St. 2d 261 (1979). The decision of whether a manifest injustice occurred rests with the sound discretion of the trial court. State v. Smith, 49 Ohio St. 2d 261. "Abuse of Discretion" is more than mere error of law and/or judgment; it implies an arbitrary, unreasonable, and/or unconscionable attitude on the part of the Trial Court. State v. Adams, 62 Ohio St. 2d 151 (1980).

This Court has held that unless denial of the motion to withdraw is clearly warranted, a trial court should conduct a hearing. State v. Xie, 62 Ohio St. 3d 521 (1992); see State v. Francis, 104 Ohio St. 3d 490 (2004). "A hearing on a post-sentence Crim. R. 32.1 motion is not required if the facts alleged by the defendant and accepted as true by the trial court would not require the court to permit a guilty plea to be withdrawn." State v. Wynn, 131 Ohio App. 3d 725 (1998); State v. Blatnik, 17 Ohio App. 3d 201 (1984).

In Turner, the Second District Court of Appeals went on to state "Clearly, if defendant was denied an opportunity to present a self-defense claim at trial because of his trial counsel's erroneous advice that defendant was not entitled to assert that defense, the trial court would be obligated to permit withdrawal of defendant's guilty plea because counsel's deficient performance created a manifest injustice by impairing the knowing, intelligent, and voluntary character of defendant's plea." See State v. Turner, 171 Ohio App. 3d 82 (2<sup>nd</sup> Dist. 2007).

Appellant filed his Motion to Withdraw his Guilty Plea and attached a supporting affidavit. In such affidavit Appellant alleges that his Trial Counsel was ineffective. See Motion to Withdraw Guilty Plea Supporting Affidavit p1, (hereinafter "Affidavit").

To prove a claim of ineffective assistance counsel sufficient to reverse a conviction, Appellant must show the Trial Counsel's conduct fell below the objective standard of reasonableness; and that the errors were serious enough in nature to create a reasonable probability, that, but for the errors, the result of the trial would have been different. Strickland v. Washington, 466 U.S. 668, 688 (1984); State v. Bradley, 42 Ohio St. 3d 136 (1989). Ineffective assistance of counsel is a basis for seeking a post sentence withdrawal of a guilty plea. State v. Turner, 175 Ohio App. 3d 250 (2008); State v. Dalton, 153 Ohio App. 3d (2003).

As was stated above, Appellant entered a plea of guilty to one count of Conspiracy to Commit Aggravated Murder. Appellant pled guilty after his Trial Counsel communicated to him that he was no longer comfortable going forward with the defense was entrapment, which was the trial strategy up to that point. Trial counsel communicated to Appellant that he would not assert the defense of entrapment. Affidavit p1. Trial Counsel first communicated to Appellant that the defense of entrapment would not be presented after the trial had already commenced. Affidavit p1. The reasons given were the Trial Court would not present the Jury Instruction for Entrapment and counsel would not present the defense of entrapment. Affidavit p1.

A Trial Court must give all instructions which are relevant and necessary for the jury to weigh the evidence and discharge its duties. State v. Joy, 74 Ohio St. 3d 178 (1995). If there is no evidence to support an issue, then the Trial Court will not instruct the jury on such issue. Murphy v. Carrolton Mfg. Co., 61 Ohio St. 3d 585, 591 (1991), citing Riley v. Cincinnati, 46 Ohio St. 2d 287 (1976). Either party can request a written jury instruction and as long as its reasonable and supported by evidence the Court will give the instruction to the jury.

To prove entrapment, the Appellant would have to demonstrate that he did not conceive of committing the offense, and it was suggested to him by an agent of the police, for the purpose of causing his arrest or prosecution. See State v. Doran, 5 Ohio St. 3d 187 (1983). If Appellant were to demonstrate entrapment by a preponderance of the evidence, Appellant would have to be found not guilty. "Entrapment is not established when government officials merely afford the opportunity or facilities for the commission of the offense, and it is shown that Defendant was predisposed to commit the offense." State v. Doran, 5 Ohio St. 3d 187 (1983), quoting Sherman v. United States, 356 U.S. 369 (1958). In Ohio, the entrapment defense is subjective and the relevant factors on the issue of predisposition include "(1) the accused's previous involvement in criminal activity of the nature charged, (2) the accused's ready acquiescence to the inducements offered by the police, (3) the accused's expert knowledge in the area of the criminal activity charged, (4) the accused's ready access to contraband, and (5) the accused's willingness to involve himself in criminal activity." State v. Doran, 5 Ohio St. 3d 187 (1983).

In the case at hand, Appellant had no previous involvement in the crimes of attempted murder or conspiracy to commit murder. See Affidavit. In addition, Appellant and the informant met on more than seven occasions before the incidents in March of 2008. Appellant has no expert knowledge in the area of attempted murder and conspiracy to commit murder, and as stated above Appellant was not very willing to be involved in the criminal activity. Thus, Appellant was not predisposed to committing the offenses he was charged with.

With regard to the informant being an agent of the police, the entrapment defense encompasses inducements initiated by government officials or private citizens acting as government agents. United States v. McLernon, 746 F. 2d 1098, 1109 (Sixth Circuit Court of Appeals (1984)). An agency relationship is created when a principal has the right to control the

actions of an agent. Hanson v. Kynast, 24 Ohio St. 3d 171, 173 (1986). An Agency relationship can be created through an express grant of authority or by implication. McSweeney v. Jackson, 117 Ohio App. 3d 623, 630 (1996). An agency relationship can also be established through ratification of unauthorized acts of an agent. Bailey v. Midwestern Ent. Inc., 103 Ohio App. 3d 181, 185 (1995).

With regard to the informant being an Agent of the police, the entire alleged conspiracy originated with and was planned and facilitated by the informant. **Affidavit p2**. The informant in this case had worked with the police for a number of years, and thus had been an agent of the police. **Affidavit p2**. The informant's motivation was monetary while Appellant's former business partner was involved in an effort to avoid repaying Appellant for monies he had taken from Appellant. **See Affidavit**. The informant induced Appellant to commit the offense at issue herein; Appellant had no intention to commit such offense prior to involvement by the informant. **Affidavit p2-3**. There is no evidence of Appellant's predisposition to commit the alleged acts.

Appellant and the informant meant on several occasions. The first occasion was on September 17, 2007. **Affidavit p10**. The first three meetings occurred in September of 2007 and there was no discussion of any crime. **Affidavit p10-11**. The next contact between Appellant and the informant was not until January 10 or 11<sup>th</sup> of 2008. **Affidavit p11**. The informant communicated to Appellant that Appellant's former business partner wanted Appellant dead, and asked if Appellant would want the informant to "take care" of the former business partner, and Appellant declined. **Affidavit p11**. This was the first mention of killing Appellant's former business partner and the informant was the one who brought it up. The informant appeared at Appellant's employment and did so 5-6 more times unannounced pressing for information about Appellant's former business partner. **Affidavit p11**. During each visit the informant would tell

Appellant he should not let the business partner get away with what he has done to Appellant. **Affidavit p11.** The next important event occurred on March 21, 2008 this is when the setup occurred. On this date, Appellant had been at the office, at a mobile home park, and the Courthouse to pay a ticket. **Affidavit p12.** The entire idea of the murder of Appellant's former business partner came from the informant. **Affidavit p12.** Appellant has never shown the informant thousands of dollars of cash and he has never been in Appellant's vehicle. **Affidavit p14.** The informant communicated to others that he was on a mission to get Appellant and was paid to do so. **Affidavit p13.**

The Appellant has demonstrated he had no preconceived notions of committing the crimes of murder and/or conspiracy to commit murder. The offenses were suggested to him by the informant through numerous meetings, controlled by the informant, for the purpose of causing Appellant's arrest and prosecution.

Further, Trial Counsel was ineffective by not listing the informant as a witness and thus Appellant was relying on the State to call the informant as a witness. **Affidavit p6.** Trial Counsel did not subpoena the Informant who was clearly an important witness to the case but more importantly an integral witness to Appellant's entrapment defense case. During the trial, counsel communicated to Appellant that the State was not going to call the informant as a witness and due to the fact that Appellant's counsel did not secure him as a witness he may not appear. **Affidavit p6-7.** Clearly the informant was a crucial witness to Appellant's claim of entrapment and the fact that he may not appear was a factor that lead to Appellant entering a plea, and thus Appellant felt pressure and coerced into pleading guilty, as a crucial witness to his defense was not going to appear.

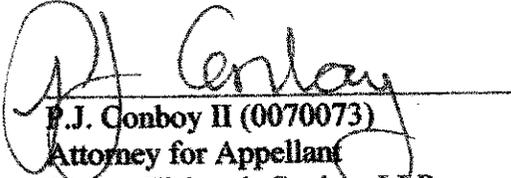
The foregoing demonstrates that Trial Counsel's conduct fell below the objective standard of reasonableness by not properly securing witnesses; not filing a Motion to Suppress statements; and not following through with the defense of entrapment. Such errors, if corrected, reasonably could have resulted in a different trial result, and Appellant would not have entered a guilty plea if not for the errors.

In this case Appellant was denied the opportunity to present the defense of entrapment at trial because of his trial counsel's erroneous advice, and as a result of such advice Appellant pled guilty. Trial Counsel's deficient performance as demonstrated above created a manifest injustice by impairing the knowing, voluntary and intelligent character of Appellant's guilty plea, and thus the Trial Court and Second District Court of Appeals erred in denying Appellant's Motion to Withdraw his Pleas without a hearing.

#### **IV. CONCLUSION**

For the foregoing reasons, this case involves a constitutional question and the Ohio Supreme Court should exercise jurisdiction over Appellant's discretionary appeal so that Appellant's due process rights will not be violated and Appellant's Motion to Withdraw His Pleas can be heard on the merits.

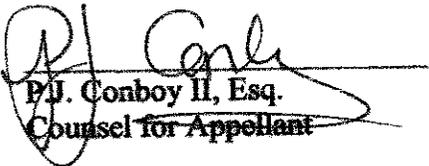
Respectfully submitted,



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**CERTIFICATE OF SERVICE**

It is hereby certified that a copy of this Memorandum in Support of Jurisdiction was sent by ordinary U.S. mail to counsel for Appellee, Andrew Picek, Esq., c/o Clark County Prosecutor's Office, 50 East Columbia Street, 4<sup>th</sup> Floor, Springfield, Ohio 45501 on October 20, 2011.



P.J. Conboy II, Esq.  
Counsel for Appellant

mailed  
to client  
9/12/11

IN THE COURT OF APPEALS FOR CLARK COUNTY, OHIO

STATE OF OHIO

Plaintiff-Appellee

v.

JEFFREY S. ULERY

Defendant-Appellant

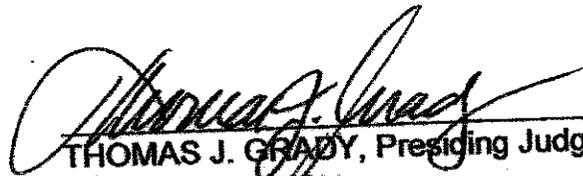
C.A. CASE NO. 2010 CA 89

T.C. NO. 08CR293

**FINAL ENTRY**

.....  
Pursuant to the opinion of this court rendered on the 9th day of September 2011,  
the judgment of the trial court is affirmed.

Costs to be paid as stated in App.R. 24.

  
THOMAS J. GRADY, Presiding Judge

  
JEFFREY E. FROELICH, Judge

  
TIMOTHY P. CANNON, Judge  
(Sitting by assignment of the Chief  
Justice of the Supreme Court of Ohio)

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**Hon. Richard J. O'Neill  
Common Pleas Court  
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Springfield, Ohio 45502**

IN THE COURT OF APPEALS FOR CLARK COUNTY, OHIO

STATE OF OHIO

Plaintiff-Appellee

v.

JEFFREY S. ULERY

Defendant-Appellant

C.A. CASE NO. 2010 CA 89

T.C. NO. 08CR293

(Criminal appeal from  
Common Pleas Court)

.....  
**OPINION**

Rendered on the 9<sup>th</sup> day of September, 2011.  
.....

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.....  
FROELICH, J.

Jeffrey Ulery appeals from the trial court's denial of his Crim.R. 32.1 motion to withdraw his guilty plea to the offense of conspiracy to commit aggravated murder.

Ulery was indicted in April of 2008 on two counts of conspiracy to commit

aggravated murder and one count of attempted aggravated murder. A jury trial commenced in December of 2008, but a plea agreement was reached prior to completion. Ulery pled guilty to one count of conspiracy to commit aggravated murder and the remaining charges were dismissed. Ulery appealed, and his appellate counsel filed an *Anders* brief with two potential assignments of error: (1) ineffective assistance of counsel, and (2) that Ulery did not understand his constitutional rights prior to pleading guilty.

We affirmed Ulery's conviction on February 5, 2010. *State v. Ulery*, Clark App. No. 2009 CA-5, 2010-Ohio-376. We held that Ulery received effective assistance of counsel at trial, and that his plea was made knowingly and voluntarily. *Id.* In November of 2009, Ulery filed a motion to withdraw his guilty plea, which was denied by the trial court on August 23, 2010 without a hearing. It is from this judgment that Ulery now appeals.

Ulery's single assignment of error states:

**THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING APPELLANT'S MOTION TO WITHDRAW HIS GUILTY PLEA.**

Ulery contends that his guilty plea was not knowingly and voluntarily made because he received ineffective assistance of counsel at trial. He argues that his counsel was deficient in that he did not proceed with the affirmative defense of entrapment, procure a key witness for the defense, or file a motion to suppress certain statements that the defendant made to an informant. He argues that the trial court should have held a hearing on his claims before ruling on his motion to withdraw his plea.

Crim.R. 32.1 provides: "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.”

“The distinction between pre-sentence and post-sentence motions to withdraw pleas of guilty or no contest indulges a presumption that post-sentence motions may be motivated by the desire to obtain relief from a sentence the movant believes is unduly harsh and was unexpected. The presumption is nevertheless rebuttable by showing of a manifest injustice affecting the plea. ‘A “manifest injustice” comprehends a fundamental flaw in the path of justice so extraordinary that the defendant could not have sought redress from the resulting prejudice through another form of application reasonably available to him or her.’ The movant has the burden to demonstrate that a manifest injustice occurred.” *State v. Brooks*, Montgomery App. No. 23385, 2010-Ohio-1682, ¶18 (internal citations omitted).

“A trial court is not necessarily required to hold a hearing before deciding a post-sentence withdrawal motion. A hearing is required only if the facts alleged by the defendant, if accepted as true, would require the plea to be withdrawn.” *State v. McComb*, Montgomery App. Nos. 22570, 22571, 2009-Ohio-295, ¶19. “A motion to withdraw a guilty plea is addressed to the sound discretion of the trial court, and a reviewing court will not interfere with that decision absent an abuse of discretion.” *State v. Turner*, 171 Ohio App.3d 82, 2007-Ohio-1346, ¶21. “Abuse of discretion” implies an arbitrary, unreasonable, unconscionable attitude on the part of the trial court. *State v. Adams* (1980), 62 Ohio St.2d 151.

“It is well established by pertinent Ohio case law that claims submitted in support of a Crim.R. 32.1 motion to withdraw plea that could have been raised on direct appeal, but were not raised in direct appeal, are barred by res judicata.” *State v. Madrigal*, Lucas

App. Nos. L-10-1142, L-10-1143, 2011-Ohio-798, ¶16 (internal citations omitted). In this case, not only could the issues have been raised, they were specifically addressed.

In the direct appeal, Appellate counsel filed an *Anders* brief (appellant did not file a pro se brief) and we conducted an independent review. We found that there, "is no arguable merit to the claim that Ulery did not knowingly, intelligently, and voluntarily enter his plea." *Ulery* at ¶9. We also held that the "record manifestly does not support a claim that defense counsel's performance was deficient." *Id.* at ¶11.

Under the doctrine of *res judicata*, "[a] point or a fact which was actually and directly in issue in a former action and was there passed upon and determined by a court of competent jurisdiction may not be drawn in question in any future action between the same parties or their privies, whether the cause of action in the two actions be identical or different." *Norwood v. McDonald* (1943), 142 Ohio St. 299, paragraph three of the syllabus. "The law-of-the-case doctrine holds that the decision of the reviewing court in a case remains the law of that case on the questions of law involved for all subsequent proceedings at the trial and appellate levels." *Nolan v. Nolan* (1984), 11 Ohio St.3d 1.

*Res judicata* bars Ulery from raising ineffective assistance of counsel and whether his plea was knowingly and voluntarily made as grounds to appeal the denial of his Crim.R. 32.1 motion. The trial court did not abuse its discretion in denying Ulery's Crim.R. 32.1 motion without a hearing, since no issues were raised that had not already been adjudicated. Ulery has failed to show a "manifest injustice" requiring his plea to be withdrawn or the trial court to hold a hearing.

Ulery's assignment of error is overruled. The judgment of the trial court will be affirmed.

.....  
**GRADY, P.J. and CANNON, J., concur.**

**(Hon. Timothy P. Cannon, Eleventh District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).**

**Copies mailed to:**

**Andrew R. Picek  
P. J. Conboy II  
Hon. Richard J. O'Neill**