

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

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2011-03-059
- vs -	:	<u>OPINION</u>
	:	8/20/2012
WILLIAM H. MANIS,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2010-11-1904

Michael T. Gmoser, Butler County Prosecuting Attorney, Lina N. Alkamdawi, Government Services Center, 315 High Street, 11th Floor, Hamilton, Ohio 45011, for plaintiff-appellee

William H. Manis, #A647727, Lebanon Correctional Institution, P.O. Box 56, Lebanon, Ohio 45036, defendant-appellant, *pro se*

POWELL, P.J.

{¶ 1} Defendant-appellant, William Manis, appeals a decision of the Butler County Court of Common Pleas denying his presentence motion to withdraw his guilty plea.

{¶ 2} In December 2010, appellant was indicted on two counts of kidnapping and nine counts of rape. Appellant initially entered a written plea of not guilty by reason of insanity, and his attorney requested a psychiatric evaluation to determine appellant's

competency to stand trial. Following the evaluation, a hearing was held before the trial judge. During the hearing, appellant's attorney stipulated to the finding in the report that appellant was competent to stand trial.

{¶ 3} On January 28, 2011, appellant withdrew his insanity plea and pleaded guilty to all 11 charges as set forth in the indictment. Following an extensive plea hearing, the trial court accepted appellant's pleas and found him guilty as charged.

{¶ 4} On March 4, 2011, appellant moved to withdraw his guilty pleas pursuant to Crim.R. 32.1. At a hearing on the motion, appellant testified that he did not understand the effect of his pleas due to an anxiety disorder, which was exacerbated by pressure from the media, his mother's failing health, and the severity of the charges against him. During cross-examination, however, appellant admitted that his anxiety disorder did not cause him to plead guilty, stating, "that's not what anxiety does to you."

{¶ 5} After the hearing, the trial court denied appellant's motion. The court found that appellant did not appear anxious during the plea hearing, and noted that appellant never mentioned his mother's illness or any other stressful event that may have influenced his pleas. The court concluded that appellant had simply experienced a sudden change of heart, which did not justify granting a motion to withdraw a guilty plea. The trial court then sentenced appellant to a total of 30 years imprisonment.

{¶ 6} Appellant timely appeals, raising four assignments of error for review. For ease of analysis, we will address appellant's assignments of error out of order.

{¶ 7} Assignment of Error No. 2:

{¶ 8} WAS I THREATENED, FORCED, OR COERCED?

{¶ 9} In his second assignment of error, appellant claims that his trial counsel coerced him into pleading guilty, thus his pleas were not knowing, voluntary, and intelligent.

{¶ 10} The basic tenets of due process require that a guilty plea be made "knowingly,

intelligently, and voluntarily." *State v. Engle*, 74 Ohio St.3d 525, 527 (1996). Failure on any of these points renders enforcement of the plea unconstitutional under both the United States Constitution and the Ohio Constitution. *Id.*

{¶ 11} "Crim.R. 11(C) was adopted in order to facilitate a more accurate determination of the voluntariness of a defendant's plea by ensuring an adequate record for review." *State v. Nero*, 56 Ohio St.3d 106, 107 (1990). Crim.R. 11(C)(2) requires the trial judge to personally inform the defendant of the constitutional guarantees he waives by entering a guilty plea. In addition to the constitutional duty to inform, Crim.R. 11(C) requires the trial judge to tell the defendant certain other matters before accepting a guilty plea. *Id.*, citing *State v. Johnson*, 40 Ohio St.3d 130, 132-133 (1988). Specifically, Crim.R. 11(C)(2) requires:

(2) In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and shall not accept such plea without first addressing the defendant personally and:

(a) Determining that he is making the plea voluntarily, with understanding of the nature of the charge and of the maximum penalty involved, and, if applicable, that he is not eligible for probation.

(b) Informing him of and determining that he understands the effect of his plea of guilty or no contest, and that the court upon acceptance of the plea may proceed with judgment and sentence.

(c) Informing him and determining that he understands that by his plea he is waiving his rights to jury trial, to confront witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to require the state to prove his guilt beyond a reasonable doubt at a trial at which he cannot be compelled to testify against himself.

{¶ 12} Courts have divided Crim.R. 11 rights into constitutional and nonconstitutional rights. Concerning the constitutional rights in Crim.R. 11(C)(2)(c), the standard is strict compliance; for the nonconstitutional rights in Crim.R. 11(C)(2)(a) and (b), the standard is

substantial compliance. *Nero*, 56 Ohio St.3d at 107; *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, ¶ 31. "Substantial compliance means that under the totality of the circumstances the defendant subjectively understands the implications of his plea and the rights he is waiving." *Nero* at 108.

{¶ 13} Here, appellant does not argue that the trial court failed to explain his constitutional rights, the consequences of his pleas, or the maximum sentence involved. Instead, he argues that his pleas were coerced and therefore were not voluntary. Appellant first argues that counsel took advantage of his "weakened state of mind," and pressured him into pleading guilty to receive a lighter sentence. This argument lacks merit.

{¶ 14} Before the trial court accepted appellant's guilty pleas, it specifically asked appellant whether he was thinking clearly, to which appellant replied affirmatively and without hesitation. The trial court then engaged appellant in the following exchange:

THE COURT: Are you satisfied with the advice, competence and counsel rendered to you by Mr. Evans with respect to his representation of you in this matter?

THE DEFENDANT: Yes.

THE COURT: Do you have any questions of him or me at this time?

THE DEFENDANT: No.

THE COURT: Are you asking the Court to accept your pleas of guilty to these 11 offenses, that being two counts of kidnapping and nine counts of rape as charged in the indictment in this matter?

THE DEFENDANT: Yes.

THE COURT: Before I do so, Mr. Manis, I want to inquire of you, has anybody threatened or coerced you in any way to cause you to come in here today and tender these guilty pleas to the Court?

THE DEFENDANT: No.

THE COURT: * * * Has anybody else made you any promises in

connection with your pleas of guilty here today?

THE DEFENDANT: No.

{¶ 15} Prior to entering his guilty pleas, appellant reiterated that he understood everything that the court said and acknowledged that he was knowingly, intelligently and voluntarily entering the pleas. Moreover, the plea forms signed by appellant the same day clearly stated, "I understand the nature of these charges and the possible defenses I might have. I am satisfied with my attorney's advice and competence. I am not under the influence of drugs or alcohol. No threats have been made to me."

{¶ 16} From this, it is clear that appellant had ample opportunity to address any potential coercion with the court, and there is nothing in the record to demonstrate that counsel coerced appellant's pleas, or that he was not thinking clearly at the time he entered them. Thus, we reject appellant's first argument.

{¶ 17} Appellant also claims that he did not expect to enter a plea at all during the hearing on January 28, 2011, and that he only did so because of last-minute pressure from his attorney.

{¶ 18} A review of the record reveals that appellant was entirely aware of the purpose of the plea hearing prior to entering his guilty pleas. During the hearing, the trial court presented each of appellant's plea forms, and confirmed that appellant had signed each document. The trial court then explained that the forms reflected appellant's intent to withdraw his former plea of not guilty and to enter pleas of guilty. Prior to discussing the effect of appellant's pleas on his constitutional rights, the trial court asked appellant whether he had a "full and fair opportunity to read, review, and discuss" the plea forms with his attorney. Appellant stated that he had, and confirmed that he was asking the court to accept his guilty pleas to all 11 charges in the indictment.

{¶ 19} In sum, appellant's unsubstantiated claims that his attorney coerced him into

pleading guilty are not sufficient to overcome the evidence to the contrary in the hearing transcript. As this is appellant's sole challenge to the Crim.R. 11 colloquy, we reject appellant's claim that his pleas were not knowing, voluntary, and intelligent.

{¶ 20} Appellant's second assignment of error is overruled.

{¶ 21} Assignment of Error No. 3:

{¶ 22} STANDARDS TO CONSIDER IN ORDER TO GRANT OR DENY A MOTION TO WITHDRAW A PLEA.

{¶ 23} In his third assignment of error, appellant argues that the trial court erred in denying his presentence motion to withdraw his guilty pleas. Specifically, appellant claims that the trial court failed to consider whether he was innocent.

{¶ 24} It is well-established that a presentence motion to withdraw a guilty plea "should be freely and liberally granted." *State v. Gabbard*, 12th Dist. No. CA2006-03-025, 2007-Ohio-461, ¶ 7, citing *State v. Xie*, 62 Ohio St.3d 521, 527 (1992). Nevertheless, a defendant does not possess "an absolute right to withdraw a plea prior to sentencing." *Xie* at 527. As a result, a trial court must conduct a hearing to determine whether there is a "reasonable and legitimate basis for the withdrawal of the plea." *Id.* On review, the trial court's decision will not be reversed absent an abuse of discretion. *Id.* More than an error of law or judgment, an abuse of discretion implies that the trial court's ruling was arbitrary, unreasonable, or unconscionable. *Id.*

{¶ 25} In reviewing whether the trial court abused its discretion, this court considers the following factors:

- (1) whether the defendant was represented by highly competent counsel;
- (2) whether the defendant was afforded a complete Crim.R. 11 hearing before entering the plea;
- (3) whether the trial court conducted a full and impartial hearing on the motion to withdraw the plea;
- (4) whether the trial court gave full and fair consideration to the motion;
- (5) whether the motion was made within a reasonable time;
- (6) whether the motion set out specific

reasons for the withdrawal; (7) whether the defendant understood the nature of the charges and the possible penalties; (8) whether the defendant was possibly not guilty of the charges or had a complete defense to the charges; and (9) whether the state would have been prejudiced by the withdrawal.

Gabbard, 2007-Ohio-461 at ¶ 9, quoting *State v. Dafforn*, 12th Dist. No. CA2006-03-023, 2006-Ohio-7035, ¶ 8.

{¶ 26} After a thorough review of the record, we conclude that the trial court acted within its discretion when it denied appellant's motion to withdraw his guilty pleas. First, as we will explain more below, appellant was represented by competent counsel. Secondly, as previously discussed, appellant received a full Crim.R. 11 hearing in acceptance of his pleas.

{¶ 27} The record also demonstrates that appellant received a full hearing on his motion to withdraw his guilty pleas. During the hearing, the trial court allowed appellant to testify on his own behalf and heard arguments from both sides regarding the motion. However, appellant did not present any additional witnesses, nor did he introduce any documentary evidence in support of his motion.

{¶ 28} Further, it is clear that the trial court gave full consideration to appellant's stated reason for his motion, namely, that he only pled guilty because he had an anxiety attack and felt "pressured" to enter the pleas. In rejecting appellant's argument, the trial court noted that appellant did not appear anxious prior to entering his pleas, and that he had in fact denied being coerced or pressured into pleading guilty. We defer to the trial court's finding in this respect, where "the good faith, credibility and weight of the movant's assertions in support of the motion [to withdraw a guilty plea] are matters to be resolved by that court." *Xie*, 62 Ohio St.3d at 525, quoting *State v. Smith*, 49 Ohio St.2d 261, 264 (1977).

{¶ 29} The trial court also noted, and we agree, that appellant's motion was not made within a reasonable time, when appellant filed his motion 35 days after pleading guilty, and only four days before the matter was set for sentencing.

{¶ 30} Lastly, we reject the crux of appellant's argument, namely, that the trial court failed to consider the possibility that he was not guilty. Instead, the trial court specifically addressed appellant's newly declared innocence, and noted that appellant had never previously made such a claim, nor did he attempt to assert a meritorious defense, despite admittedly discussing these issues with his attorney. Further, during the hearing, appellant did not introduce a copy of the psychiatric evaluation, the very document that he now claims contains the exculpatory evidence that could prove his innocence.

{¶ 31} Upon review, we agree with the trial court that appellant simply had a "change of heart" in anticipation of sentencing. We have consistently held that a change of heart is insufficient justification to withdraw a plea. *State v. Witherspoon*, 12th Dist. No. CA2010-01-025, 2010-Ohio-4569, ¶ 17. Thus, we find that the trial court did not abuse its discretion in denying appellant's motion to withdraw his guilty pleas.

{¶ 32} Appellant's third assignment of error is overruled.

{¶ 33} Assignment of Error No. 1:

{¶ 34} INEFFECTIVE ASSISTANCE OF COUNSEL.

{¶ 35} Appellant now claims that his trial counsel was ineffective for requesting that appellant submit to a psychiatric evaluation. Appellant argues that counsel put him in a position to incriminate himself by answering the psychiatrist's questions. This argument lacks merit.

{¶ 36} First, by pleading guilty, appellant "waived the right to claim he was prejudiced by the ineffective assistance of counsel except to the extent that the defects complained of caused the plea to be less than knowingly, intelligently, and voluntarily made." *State v. Gray*, 12th Dist. Nos. CA2010-01-006, CA2010-04-024, 2010-Ohio-4949, ¶ 31. Appellant does not explain, nor do we see, how counsel's decision to request a psychiatric evaluation affected the knowing, voluntary, or intelligent nature of his pleas.

{¶ 37} Even if we were to consider appellant's argument, we would not find that counsel was ineffective for requesting a psychiatric evaluation. In *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984), the Supreme Court of the United States established a two-part test to determine whether an appellant was denied the effective assistance of counsel. First, an appellant must establish that counsel's representation "fell below an objective standard of reasonableness," and secondly, that there was a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 688, 694.

{¶ 38} Here, it was hardly unreasonable for appellant's attorney to request a psychiatric evaluation, given appellant's history of mental illness and severe personality disorders, for which he was not currently medicated, and which could have affected his ability to understand the nature of the charges against him or assist in his defense. Given the apparent reasonableness of counsel's request, it would not be necessary to consider the second prong of *Strickland*, because an appellant must prove both prongs in order to establish ineffective assistance of counsel. *Id.* at 697.

{¶ 39} Under these circumstances, appellant's first assignment of error is overruled.

{¶ 40} Assignment of Error No. 4:

{¶ 41} CONFLICT OF INTEREST.

{¶ 42} In his last assignment of error, appellant argues that trial counsel had a conflict of interest, where counsel spoke to the state's witnesses, and had represented the victim's stepfather in a prior unrelated matter. Appellant also claims that his attorney was biased against him, because he allegedly told appellant that the victim "did not deserve what [appellant] did." This is essentially a secondary claim of ineffective assistance of counsel. See *State v. Gillard*, 78 Ohio St.3d 548 (1997) (Sixth Amendment violation due to a conflict of interest).

{¶ 43} First, we note that appellant did not raise the conflict of interest argument in his motion to withdraw his guilty pleas. See *State v. Von Allmen*, 2nd Dist. No. Civ.A.2004-CA-51, 2005-Ohio-1384, ¶ 18 (defendant not entitled to withdraw guilty plea due to alleged conflict of interest because he failed to raise the issue in motion to withdraw plea). See also *State v. Chaney*, 2nd Dist. No. 2011-CA-13, 2012-Ohio-3101, ¶ 17-18. Further, appellant has wholly failed to prove that the alleged conflict of interest affected the knowing, voluntary, or intelligent nature of his pleas. As previously discussed, a guilty plea waives all claims relating to ineffective assistance of counsel except to the extent that the defect caused the plea to be less than knowing, voluntary, and intelligent. *Gray*, 2010-Ohio-4949 at ¶ 31. Here, the alleged conflict does not fit this exception to the waiver rule.

{¶ 44} Based on the foregoing, we reject appellant's conflict of interest argument and overrule his fourth and final assignment of error.

{¶ 45} Judgment affirmed.

HENDRICKSON and HUTZEL, JJ., concur.