

IN THE COURT OF APPEALS OF OHIO  
FOURTH APPELLATE DISTRICT  
WASHINGTON COUNTY

THE STATE OF OHIO,	:	Case No. 09CA16
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	<u>DECISION AND</u>
	:	<u>JUDGMENT ENTRY</u>
	:	
ROBERT D. CLINE,	:	
	:	
Defendant-Appellant.	:	<b>Released 11/2/09</b>

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APPEARANCES:

Teresa D. Schnittke, Lowell, Ohio, for appellant.

Roland W. Riggs, III, Marietta City Law Director, and Catherine Ingram Reynolds, Marietta City Assistant Law Director, Marietta, Ohio, for appellee.

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Harsha, J.

{¶1} Robert D. Cline appeals the denial of his post-sentence motion to withdraw his no contest plea to carrying a firearm or dangerous ordnance while under the influence of alcohol. Cline argues that the trial court abused its discretion in denying his motion because his plea was not made knowingly, voluntarily, and intelligently. However, all Cline put forward in support of this argument was his own unsubstantiated assertion that due to the effects of anxiety medication, he did not understand the rights he waived by pleading no contest. The record contradicts this assertion because at the sentencing hearing, Cline appears coherent and repeatedly represented to the trial court that he understood his rights. Accordingly, the trial court did not abuse its discretion in denying Cline’s motion to withdraw his no contest plea, and we affirm its judgment.

## I. Facts

{¶2} In March 2009, Cline was charged with carrying or using a firearm or dangerous ordnance while under the influence of alcohol or a drug of abuse in violation of R.C. 2923.15, a first degree misdemeanor. On March 23, 2009, the trial court held a plea hearing where Cline was not represented by counsel. Before entering his plea, Cline watched a video explaining his rights. The court also gave Cline an “acknowledgement of rights” form that explained, among other things, that Cline had the right to a jury trial and the right to be represented by counsel. Cline signed a clause indicating that he read these rights or they had been read to him and that he understood his rights. He also signed statements to “voluntarily and knowingly” waive his right to counsel and to a jury trial. The trial court engaged in a lengthy colloquy with Cline at the plea hearing to ensure that he understood the rights he was waiving. For example, the following exchanged occurred between the trial court and the defendant:

THE COURT: Mr. Cline, the Court has received for filing at the bench, a signed acknowledgment of your rights, which means that you understand what your rights are. A signed waiver of counsel, which means you wish to proceed without a lawyer. You don't want a continuance to talk to a lawyer. And so is this right? You don't wish to be represented in this matter by a lawyer?

THE DEFENDANT: Yes.

THE COURT: So you understand that if you wanted a continuance, I'd give you one. If you qualified for appointed counsel, I would appoint one, do you understand that?

THE DEFENDANT: Yes.

THE COURT: Do you understand that you are also giving up your jury trial right?

THE DEFENDANT: Yes.

THE COURT: Are you doing so voluntarily?

THE DEFENDANT: Yes.

THE COURT: Do you understand that at a jury trial, the obligation is on the State of Ohio to prove your guilt beyond a reasonable doubt of all the elements of the offense to all eight members of the jury[?] And you or your lawyer if you chose to have one, would be entitled to cross examine the witnesses they bring against you, and you could have witnesses subpoenaed on your behalf. Do you understand that?

THE DEFENDANT: Yeah.

Cline then entered a no contest plea and the trial court sentenced him to 93 days in the county jail and ordered him to pay a \$200 fine and costs. The court placed Cline on probation for 90 days of the jail sentence.

{¶3} Shortly after sentencing, Cline filed a motion to withdraw his plea. At a hearing on the motion, Cline testified that he did not understand what he was doing when he entered the plea due to the effects of his anxiety medication, which was being adjusted at the time of the plea hearing. He introduced two exhibits into evidence without objection. The first, a document purportedly signed by a physician at Camden-Clark Memorial Hospital in West Virginia and dated February 18, 2009, indicated that Cline was on sick leave from February 15 to February 22, 2009 and could resume working on February 23, 2009. The second, a document purportedly signed by a physician at Marietta Memorial Hospital in Ohio and dated March 4, 2009, indicated that Cline had been unable to work “due to illness” since February 27, 2009 and “might be able to return to work” on March 27, 2009.

{¶4} After considering Cline’s testimony, the exhibits, the record of the plea hearing, and arguments of counsel, the trial court found that Cline’s “testimony regarding his medical treatment [was] unsupported by other evidence and [was]

insufficient to prove manifest injustice \* \* \*.” After the court denied Cline’s motion, he filed this appeal.

## II. Assignment of Error

{¶15} Cline assigns the following error for our review:

THE TRIAL COURT ERRED IN DENYING APPELLANT’S MOTION TO WITHDRAW HIS PLEA.

## III. Crim.R. 32.1

{¶16} In his sole assignment of error, Cline contends that the trial court abused its discretion in denying his post-sentence motion to withdraw his no contest 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.

{¶17} A defendant seeking to withdraw a no contest plea after sentence has the burden of establishing that a manifest injustice will occur if the plea stands. See *State v. Smith* (1977), 49 Ohio St.2d 261, 361 N.E.2d 1324, at paragraph one of the syllabus. A “manifest injustice” is “a clear or openly unjust act.” *State v. Dotson*, Washington App. No. 03CA53, 2004-Ohio-2768, at ¶5, citing *State ex rel. Schneider v. Kreiner*, 83 Ohio St.3d 203, 208, 1998-Ohio-271, 699 N.E.2d 83. This extremely high standard permits a defendant to withdraw his no contest plea only in extraordinary cases. *State v. Allison*, Pickaway App. No. 06CA9, 2007-Ohio-789, at ¶7, citing *Smith* at 264.

{¶18} The decision to grant or deny a Crim.R. 32.1 motion is committed 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.”

*Smith* at paragraph two of the syllabus. Appellate review of the denial of a post-sentence motion to withdraw a no contest plea is therefore limited to a determination of whether the trial court abused its discretion. An abuse of discretion involves more than an error of judgment; it connotes an attitude on the part of the court that is unreasonable, unconscionable, or arbitrary. *State v. Adams* (1980), 62 Ohio St.2d 151, 157, 404 N.E.2d 144. When applying the abuse of discretion standard, a reviewing court is not free to merely substitute its judgment for that of the trial court. *In re Jane Doe 1* (1991), 57 Ohio St.3d 135, 138, 566 N.E.2d 1181.

{¶9} Cline argues that he did not knowingly, voluntarily, or intelligently enter the no contest plea because his anxiety medication prevented him from understanding the rights he was waiving. He points to a discussion he had with the trial court, after it accepted his plea and found him guilty, about a possible “defense” to the charge, i.e. Cline discharged his pistol as a “warning” to a known thief to not enter Cline’s property. Cline contends that based on his statements, it did “not appear that he realized that he had just given up the right to defend himself.” However, the transcript from the plea hearing shows that the trial court went to great lengths to ensure Cline understood his rights before accepting the plea and it gives no indication that Cline did not understand his rights. The trial court explained Cline’s rights to him by video, in writing, and orally, and Cline repeatedly acknowledged, in writing and orally, that he understood those rights.

{¶10} The only evidence Cline put forward in support of his argument was his testimony at the hearing regarding the effects of his anxiety medication. None of Cline’s physicians testified at this hearing. Moreover, the two documents the trial court

admitted into evidence provide no support for Cline's assertions. Although we are uncertain why the State did not object that the documents were inadmissible hearsay, they at best show that some unidentified illness prevented Cline from working at the time of the plea hearing. These documents give no indication that Cline (1) suffered from an anxiety disorder; (2) took prescription medication to cope with that disorder; or (3) had cognitive difficulties due to that medication. "Where nothing in the record supports a defendant's claim that his plea was not knowingly and voluntarily made other than his own self-serving affidavit or statement, the record is insufficient to overcome the presumption that the plea was voluntary." *State v. Lewis*, Lawrence App. No. 08CA10, 2008-Ohio-4888, at ¶17, quoting *State v. Honaker*, Franklin App. 04AP-146, 2004-Ohio-6256, at ¶18, in turn, quoting *State v. Laster*, Montgomery App. No. 19387, 2003-Ohio-1564, at ¶8. Therefore, the trial court's decision to deny Cline's motion to withdraw his no contest plea was not unreasonable, unconscionable, or arbitrary.

{¶11} We note that Cline argues that the credibility of his argument was bolstered by the fact that he filed the Crim.R. 32.1 motion two days after entering his plea. An "undue delay" in filing a Crim.R. 32.1 "is a factor adversely affecting the credibility of the movant and militating against the granting of the motion." *Smith* at paragraph three of the syllabus. However, a trial court is not required to find "manifest injustice" simply because a defendant promptly files his Crim.R. 32.1 motion, particularly when the only evidence of such injustice is the defendant's self-serving statements.

{¶12} Accordingly, we overrule Cline's sole assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

**JUDGMENT ENTRY**

It is ordered that the JUDGMENT IS AFFIRMED and that Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Marietta Municipal Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

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

Kline, P.J. & Abele, J.: Concur in Judgment and Opinion.

For the Court

BY: \_\_\_\_\_  
William H. Harsha, Judge

**NOTICE TO COUNSEL**

**Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.**