

[Cite as *State v. Johns*, 2010-Ohio-68.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92627

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

BRUCE JOHNS

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-471134

BEFORE: Gallagher, A.J., Stewart, J., and Celebrezze, J.

RELEASED: January 14, 2010

**JOURNALIZED:
ATTORNEYS FOR APPELLANT**

John Lazzaretti
Van Carson
Squire Sanders & Dempsey L.L.P.
4900 Key Tower
127 Public Square
Cleveland, Ohio 44114-1304

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

BY: Katherine Mullin
Assistant Prosecuting Attorney
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

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. 2.2(A)(1).

SEAN C. GALLAGHER, A.J.:

{¶ 1} Appellant, Bruce Johns, appeals the trial court's denial of his motion to withdraw his guilty plea on a charge of failure to verify address and his sentence for violating community control. For the reasons stated herein, we affirm.

{¶ 2} In 1993, Johns was convicted of sexual battery and abduction, both felonies of the third degree.¹ He was sentenced to prison for these offenses. At the time, the trial court did not hold a sexual-predator classification hearing. Also, the trial court did not notify Johns of his requirement to register as a sexual offender. However, Johns was classified as a sexually oriented offender by operation of law.

{¶ 3} In December 2003, Johns was released on parole. Upon reporting to the sheriff's office, he signed an explanation of duties to register as a sex offender. Johns states that he registered with the sheriff's office, but did not renew his registration when the obligation came due.

{¶ 4} On October 6, 2005, Johns was indicted on two counts of failure to verify address and failure to provide notice of change of address.² He pled guilty to failure to verify address, and the second count was nolle. The trial court

¹ *State v. Johns*, Cuyahoga County Common Pleas Case No. CR-285516.

² *State v. Johns*, Cuyahoga County Common Pleas Case No. CR-471134.

sentenced Johns to three years of community control. At that time, Johns acknowledged that he had a duty to register.

{¶ 5} In August 2007, Johns pled guilty to assault.³ He was sentenced to six months in prison, which with credit had already been served. Upon his release from prison, Johns failed to report to the probation department and failed to register his address with the sheriff's department.

{¶ 6} The trial court held a probation violation hearing on December 5, 2008. The court first addressed Johns's motion to withdraw his guilty plea in Cuyahoga County Common Pleas Court Case No. CR-471134, which involved the failure to verify address charge. Johns's counsel argued that Johns did not receive sufficient notice of his duty to register. The trial court denied the motion.

{¶ 7} The trial court proceeded to find that Johns was in violation of probation. The court sentenced Johns to four years in prison.

{¶ 8} Johns has appealed the rulings of the trial court. He raises two assignments of error for our review. His first assignment of error provides as follows: "The trial court improperly denied Mr. Johns' motion to withdraw his plea of guilty based on the erroneous conclusion that the sheriff's office could provide legally sufficient notice of Mr. Johns' duty to register."

{¶ 9} Crim.R. 32.1 provides that "to correct manifest injustice[,] the court after sentence may set aside the judgment of conviction and permit the defendant

³ *State v. Johns*, Cuyahoga County Common Pleas Court Case No. CR-480450.

to withdraw his or her plea.” A defendant who moves to withdraw a guilty plea after sentence has been imposed bears the additional burden of demonstrating manifest injustice. *State v. Smith* (1977), 49 Ohio St.2d 261, 361 N.E.2d 1324. Manifest injustice is “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.” *State v. Sneed*, Cuyahoga App. No. 80902, 2002-Ohio-6502. The Ohio Supreme Court has also defined manifest injustice as a “clear or openly unjust act.” See *State ex rel. Schneider v. Kreiner*, 83 Ohio St.3d 203, 208, 1998-Ohio-271, 699 N.E.2d 83. This standard permits a defendant to withdraw his guilty plea only in extraordinary cases. *Smith*, supra at 264. Ordinarily, we review a court’s denial of a postsentence motion to withdraw guilty plea as an abuse of discretion. *State v. Makupson*, Cuyahoga App. No. 89013, 2007-Ohio-5329.

{¶ 10} Although Johns acknowledges in his appellate brief that he moved to withdraw his guilty plea under Civ.R. 32.1 “to correct a manifest injustice,” he argues in his reply brief that his motion should have been addressed under the presentence motion to withdraw standard applied to a void sentence. See *State v. Boswell*, 121 Ohio St.3d 575, 2009-Ohio-1577, 906 N.E.2d 422, syllabus. Johns argues that the trial court failed to comply with R.C. 2929.19 because he claims he was not properly notified of the specific prison term he would face in the event of a community control violation. A review of the transcript reflects that Johns was advised of the specific prison term he faced for violating community

control when the court informed him as follows: “If you fail to [comply with community control], I will send you to prison. It is an F-3 and it’s five years to LCI and I will send you to LCI.” Thus, we find no merit to Johns’s argument and we apply the manifest injustice standard discussed above.

{¶ 11} The basis for Johns’s plea-withdrawal request was that he was not provided notice of his duty to register in accordance with applicable statutory provisions. More specifically, he states that he should have received notice either through the prison or from the judge at a sexual predator hearing. Further, although Johns signed a form following his release from prison in 2003 that acknowledged his duty to register, Johns states that he did not properly understand his reporting obligations.

{¶ 12} Johns does not dispute that his duty to register arose by operation of law. Indeed, the failure to notify a sex offender of his duty to register does not affect the duty to register, which arises by operation of law. *In re Hawkins*, Hamilton App. No. C-080052, 2008-Ohio-4381. Johns entered a plea of guilty to the charge of failure to verify address, and there is nothing in the record to suggest that this plea was not knowingly, intelligently, and voluntarily entered.

{¶ 13} Upon our review, we find that Johns has failed to fulfill his burden of demonstrating a manifest injustice. We do not find this to be an extraordinary case to warrant the withdrawal of a guilty plea. Furthermore, we recognize that Johns did not file a direct appeal following his conviction. This court has applied *res judicata* to bar the assertion of claims in a motion to withdraw a guilty plea

that were, or could have been, raised at trial or on direct appeal. *State v. McGee*, Cuyahoga App. No. 91638, 2009-Ohio-3374.

{¶ 14} Accordingly, the trial court did not abuse its discretion in denying Johns's post-conviction motion to withdraw his guilty plea. Johns's first assignment of error is overruled.

{¶ 15} Johns's second assignment of error provides as follows: "The trial court erred by sentencing Mr. Johns to prison for failing to comply with a registration requirement without first ensuring he was given proper notice of his obligation to register, in violation of Mr. Johns' due process."

{¶ 16} Johns maintains that the trial court should not have sentenced him for a violation of his probation without ensuring that he had been given proper notice of his obligation to register. The record in this case demonstrates that Johns was convicted of a sexual offense and his duty to register arose by operation of law. Johns signed an explanation of duties to register as a sex offender. He subsequently entered a plea of guilty to failure to verify address, was convicted of the charge, and was sentenced to three years of community control. At the time of sentencing for that offense, the trial court explicitly outlined Johns's duties while on community control, including his duty to register. Johns acknowledged that he understood his obligations, but then failed to comply.

{¶ 17} Unlike the cases relied upon by Johns, in this case Johns was aware of his duty to register at the time of his community control violation, and he was

not prejudiced by any failure to comply with statutory notice requirements. We do not find that Johns was denied his due process rights. Under the circumstances herein, we conclude the trial court did not err in sentencing Johns to prison for his violation of community control sanctions. Johns's second assignment of error is overruled.

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.

SEAN C. GALLAGHER, ADMINISTRATIVE JUDGE

MELODY J. STEWART, J., and
FRANK D. CELEBREZZE, JR., J., CONCUR