

[Cite as *State v. Casas*, 2003-Ohio-3237.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO
STATE OF OHIO :

Plaintiff-Appellee : C.A. CASE NO. 19049

vs. : T.C. CASE NO. 00CR2163

JESUS D. CASAS :

Defendant-Appellant :

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O P I N I O N

Rendered on the _____ day of June, 2003.

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GRADY, J.

{¶1} Defendant, Jesus Casas, appeals from a judgment denying his post sentence motion to withdraw his guilty pleas.

{¶2} Defendant was originally indicted for a first degree felony: trafficking in marijuana, over twenty thousand grams, in the vicinity of a school or juveniles. R.C. 2925.03(A). Pursuant to a negotiated plea agreement, a bill of information was filed charging Defendant with two third degree felonies: trafficking in marijuana in an amount between one thousand and

five thousand grams, and trafficking in marijuana in an amount between five thousand and twenty thousand grams. Defendant entered guilty pleas to both charges in the bill of information, the parties having stipulated that Defendant would receive a sentence ranging from four to ten years imprisonment. In exchange, the State dismissed the original indictment.

{¶3} On or about December 5, 2000, the trial court sentenced Defendant to two consecutive terms of imprisonment totaling five years. More than three months later, on March 19, 2001, Defendant filed a pro se motion seeking to withdraw his guilty pleas. On September 14, 2001, the trial court denied Defendant's motion to withdraw his guilty pleas, without a hearing.

{¶4} Defendant has timely appealed to this court from the trial court's judgment denying his motion to withdraw his guilty pleas.

FIRST ASSIGNMENT OF ERROR

{¶5} "THE TRIAL COURT ERRED IN REFUSING TO HEAR AND GRANT APPELLANT'S MOTION TO WITHDRAW HIS GUILTY PLEA."

{¶6} A post-sentence motion to withdraw a guilty plea will be granted only to correct a manifest injustice. Crim.R. 32.1; *State v. Stumpf* (1987), 32 Ohio St.3d 95, 104. Furthermore, the good faith, credibility and weight of the movant's assertions in support of such a motion are matters to be resolved by the trial court. *Stumpf, supra*. The decision whether to grant or deny a motion to withdraw a guilty plea is within the trial court's sound discretion and will not be disturbed on appeal absent an abuse of discretion. *State v. Barnett* (1991), 73 Ohio App.3d

244, 250. An abuse of discretion means more than simply an error of law or an error in judgment. It implies an arbitrary, unreasonable, unconscionable attitude on the part of the trial court. *State v. Adams* (1980), 62 Ohio St.2d 151.

{¶7} Ordinarily, a hearing is required to determine whether there is a reasonable and legitimate basis to withdraw a guilty plea. *State v. Xie* (1992), 62 Ohio St.3d 521; *State v. Peterseim* (1980), 68 Ohio App.2d 211; *Barnett, supra*. However, we conclude that a hearing was unnecessary in this case because the claims Defendant presented in support of his motion to withdraw his guilty pleas are affirmatively refuted by the record of the plea proceeding.

{¶8} Defendant claims that he had difficulty understanding English. The record of the guilty plea proceeding demonstrates otherwise. Defendant assured the trial court that he could speak English, fluently, that he could read, write and communicate in English, that he understood the plea forms and the proceedings before the court, and that he had no questions about those proceedings, or anything the court had discussed with him.

{¶9} Defendant also claims that his guilty pleas were induced by his counsel's representations that in exchange for his pleas he would receive a one year sentence. Defendant argues that the plea forms corroborate his claim that he was promised a one year sentence. On each plea form the possible prison term for the offense is listed as: 1-2-3-4-5 years, and the number one is circled.

{¶10} The plea agreement, stated on the record, included a

stipulation by the parties that Defendant's sentence would be between four and ten years, at the trial court's discretion. Defendant acknowledged during the plea hearing that no promises, other than those stated on the record, had been made to induce his guilty pleas. During the plea hearing the trial court explained to Defendant the minimum one year and maximum five years sentence applicable to each offense, and that those sentences could be imposed either concurrently or consecutively, resulting in a sentence for both counts as little as one year or as much as ten years. Defendant acknowledged he understood the possible penalties.

{¶11} Some lack of clarity regarding the sentence the trial court could impose may have resulted from the two plea forms which properly listed the possible prison term for each offense as 1, 2, 3, 4, or 5 years, but for reasons unknown, had the number one circled. Who did that, when, or why is not explained by this record. It is also unclear why, in light of the parties' stipulation that Defendant would serve between four and ten years, the trial court advised Defendant that the sentence for both counts could be as little as one year if the minimum sentence were imposed on each count and those sentences ran concurrently.

{¶12} Crim.R.11(C)(2)(a) requires the court to determine that the defendant who enters a plea of guilty or no contest understands the maximum penalty for the offense or offenses involved. Defendant's contention that his attorney told him his sentence would be but one year, a claim bolstered by the entry on

the plea form, brings Defendant's true understanding into question.

{¶13} The manifest injustice standard for post-sentencing motions filed pursuant to Crim.R. 32.1 requires a showing of extraordinary circumstances. *State v. Smith* (1977), 49 Ohio St.2d 261. We have held that, ordinarily, "a court's failure to comply with the requirements of Crim.R. 11(C) is not an extraordinary circumstance demonstrating a form of manifest injustice required for Crim.R. 32.1 relief." *State v. Hartzell* (Aug. 20, 1999), Montgomery App. No. 17499, at p.5.

{¶14} The record of the plea proceeding demonstrates that Defendant understood the maximum penalty of each of his offenses involved. With respect to whatever sentence Defendant might expect, the only limitation on the trial court's discretion is the parties' stipulation that Defendant would receive a sentence of from four to ten years. The sentence actually imposed by the trial court, two consecutive terms totaling five years, was within the allowable maximum sentence and the parties' stipulation. On this record, Defendant has failed to demonstrate any manifest injustice warranting withdrawal of his guilty pleas. The trial court did not abuse its discretion in denying Defendant's motion to withdraw his guilty pleas.

{¶15} Defendant's claim regarding promises his trial counsel made to him involves evidence outside the record of this proceeding. Such claims must be presented via post conviction relief proceedings filed pursuant to R.C. 2953.21, and require evidentiary documents, such as an affidavit from trial counsel,

showing that Defendant is entitled to relief.

{¶16} The assignment of error is overruled. The judgment of the trial court will be affirmed.

WOLFF, J. and YOUNG, J., concur.

Copies mailed to:

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Hon. Mary Katherine Huffman