[Cite as *State v. Snyder,* 2009-Ohio-4813.]

STATE OF OHIO, JEFFERSON COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO,	)	
	)	
PLAINTIFF-APPELLEE,	)	
	)	
VS.	)	CASE NO. 08-JE-27
	)	
ANTHONY SNYDER,	)	OPINION
	)	
DEFENDANT-APPELLANT.	)	

CHARACTER OF PROCEEDINGS: Criminal Appeal from Court of Common Pleas of Jefferson County, Ohio Case No. 06CR136

JUDGMENT: Affirmed

APPEARANCES:

For Plaintiff-Appellee

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Prosecutor
Jane M. Hanlin
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For Defendant-Appellant

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JUDGES:

Hon. Gene Donofrio
Hon. Cheryl L. Waite
Hon. Mary DeGenaro

Dated: September 11, 2009

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DONOFRIO, J.

{¶1} Defendant-appellant, Anthony Snyder, appeals from a Jefferson County Common Pleas Court judgment convicting him of possession of drugs with a major drug offender classification and two forfeiture specifications, following his guilty plea.

{¶2} On October 2, 2006, a bill of information was filed against appellant charging him with one count of possession of crack cocaine in an amount exceeding 100 grams, an amount that would classify him as a major drug offender, a first-degree felony in violation of R.C. 2925.11(A)(C)(4)(f). The charge also carried two forfeiture specifications, one for $2,446 in cash and the other for appellant's Dodge Intrepid.

{¶3} Appellant waived his right to indictment and consented to prosecution by the bill of information. Pursuant to a plea agreement with plaintiff-appellee, the State of Ohio, appellant entered a guilty plea to the charge. The court accepted appellant's guilty plea. In exchange for appellant's plea, the state agreed to recommend a ten-year sentence. Appellant agreed to this sentence. The trial court imposed the agreed ten-year sentence, all of which was mandatory. The court also ordered the forfeiture of the cash and car as stated in the bill of information. It entered its judgment entry of sentence on October 3, 2006. Throughout these proceedings, appellant was represented by court-appointed counsel.

{¶4} Approximately one-and-a-half years later, on May 6, 2008, appellant filed a pro se motion to withdraw his guilty plea. Appellant alleged in his motion that his trial counsel was ineffective. Specifically, appellant asserted that his counsel failed to discuss the facts of the case with him; did not interview potential witnesses; disregarded information identifying the true offenders; told appellant he would be found guilty and sentenced to the maximum term regardless of whether he had committed the crime; failed to discuss defenses or the effect of his guilty plea; and failed to present mitigation evidence at sentencing. He requested an evidentiary hearing on the matter.

{¶5} On June 18, 2008, the trial court, without a hearing on the matter, denied appellant's motion to withdraw his guilty plea.

{¶6} On August 14, 2008, appellant filed another motion to withdraw his guilty plea. He made similar allegations of ineffective assistance of counsel as in the first motion. He also added the allegations that his counsel put considerable pressure on him to plead guilty and ignored his contention that the evidence against him might be inadmissible due to a defective warrant; his counsel told him that he would get 60 years in prison if he did not take the plea deal; his counsel failed to inform him about his post-release control; and his counsel failed to inform him that his prison time was mandatory. He attached his affidavit in support of these allegations. Appellant argued that for these reasons his plea was not knowing, voluntary, or intelligent.

{¶7} The trial court once again denied appellant's motion. And once again, the court did not hold a hearing. The court found that at appellant's plea hearing, it questioned him extensively about his satisfaction with his counsel. It also found that it specifically advised appellant of post-release control and that his prison time was mandatory.

{¶8} Appellant filed a timely notice of appeal from this judgment on September 24, 2008.

{¶9} Appellant, acting pro se, raises a single assignment of error, which states:

{¶10} "THE TRIAL COURT ERRED IN DENYING THE DEFENDANT-APPELLANT A HEARING ON HIS MOTION TO WITHDRAW HIS GUILTY PLEA."

{¶11} Appellant argues that he set forth a prima facie case of ineffective assistance of counsel in his motion to withdraw his guilty plea. His allegations, appellant contends, constitute a "manifest injustice" so as to allow him to withdraw his guilty plea. At a minimum, appellant asserts that he was entitled to an evidentiary hearing on his motion. Appellant then reiterates the allegations against his counsel as set out in his motion to withdraw his plea. Appellant contends that due to his counsel's ineffectiveness, he was induced into pleading guilty and, therefore, he did not enter his plea knowingly, voluntarily, or intelligently.

{¶12} An appellate court reviews a trial court's denial of a defendant's Crim.R. 32.1 motion under an abuse of discretion standard. *State v. Smith* (1977), 49 Ohio St.2d 261, paragraph two of the syllabus. The term "abuse of discretion" connotes more than an error of law or of judgment; it implies that the trial court's attitude was unreasonable, arbitrary, or unconscionable. *State v. Adams* (1980), 62 Ohio St.2d 151, 157.

{¶13} 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."

{¶14} The burden of establishing the existence of manifest injustice is on the individual seeking to vacate the plea. *Smith,* 49 Ohio St.2d 261, paragraph one of the syllabus. "This term has been variously defined, but it is clear that under such standard, a postsentence withdrawal motion is allowable only in extraordinary cases. * * * The standard rests upon practical considerations important to the proper administration of justice, and seeks to avoid the possibility of a defendant pleading guilty to test the weight of potential punishment." (Internal citations omitted.) Id. at 264. Furthermore, although there is no time limit to make this motion after a sentence is imposed, an undue delay between the time when the motion is filed and the reason for filing the motion is a factor adversely affecting the credibility of the movant. Id.

{¶15} As for a hearing, "[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. Blatnik* (1984), 17 Ohio App.3d 201, paragraph three of the syllabus. Thus, an appellant is entitled to a hearing on a motion to withdraw only if the trial court determines that he alleges facts sufficient to prove a manifest injustice.

{¶16} Appellant made numerous allegations in his motion, all of which are unfounded.

{¶17} Appellant alleged that he did not know that his prison time was mandatory. However, at the plea hearing, the prosecutor stated that the parties had reached an agreed prison term of ten mandatory years. (Tr. 3). Appellant's counsel then stated that this agreement was correct and that appellant had full knowledge of the sentence recommendation. (Tr. 3). Later, when the court was talking with appellant, it informed appellant on no less than three separate occasions that his prison time was mandatory. (Tr. 6, 7, 12). One particular instance went as follows:

{¶18} "THE COURT: In addition - - we're kind of right here on the border line - - where are we with respect to - - this is mandatory time, never mind. So because it's mandatory time you won't be qualified for any early release programs. Do you understand that?

{¶19} "THE DEFENDANT: Yes, sir." (Tr. 7).

{¶20} Thus, appellant was well informed by the court, as well as by his counsel and the prosecutor, that his prison time was mandatory.

{¶21} Appellant also alleged that his counsel pressured and coerced him to plead guilty and threatened him with 60 years in prison if he did not take the plea deal. However, this contention is refuted by the record. Specifically, the court asked appellant: "Has anyone threatened or coerced you in any way other than what I've heard here in the courtroom this morning?" (Tr. 6). To which appellant responded, "No, sir." (Tr. 6). The court also asked appellant if he was entering his plea voluntarily, to which he responded "yes." (Tr. 6). Hence, appellant clearly expressed to the court that he was entering his plea voluntarily and was not threatened or coerced into doing so.

{¶22} Appellant further alleged that he was uninformed on the issue of post-release control. But this too is untrue as is demonstrated by the following conversation between the court and appellant:

{¶23} "THE COURT: If you were to wind up in prison in this case, which is likely because it's mandatory in this case if you're convicted, there would be some things you need to know when you get out and among those is a concept known as

post release control which works like this. When you'd get out of prison the Parole Board would be required to put conditions and restrictions on your release for five years. You understand that?

{¶24} "THE DEFENDANT: No.

{¶25} "THE COURT: Okay. You've heard the term parole before?

{¶26} "THE DEFENDANT: Yeah.

{¶27} "THE COURT: This would be like parole.

{¶28} "THE DEFENDANT: Even if I served my mandatory term?

{¶29} "THE COURT: Yes. Because this is a first degree felony it's mandatory that the Parole Board put you on post release control for five years. Okay?

{¶30} "THE DEFENDANT: I understand.

{¶31} "THE COURT: Okay. You weren't aware of that when you came in?

{¶32} "THE DEFENDANT: No.

{¶33} "THE COURT: Does that make a difference to you?

{¶34} "THE DEFENDANT: No.

{¶35} "THE COURT: Cause you can back - - you can back out of this clear up to the end if you want.

{¶36} "THE DEFENDANT: No sir, doesn't make a difference." (Tr. 12-13).

{¶37} The court then went on to explain exactly how post-release control worked to appellant. (Tr. 13-15).

{¶38} Thus, the trial court made sure that appellant was completely aware of post-release control.

{¶39} Appellant further alleged that his counsel was deficient in his representation by failing to discuss the facts of the case, failing to interview potential witnesses, and failing to discuss defenses or the effect of his guilty plea. Once again, this allegation is not supported by the record. The following colloquy refutes appellant's contention:

{¶40} "THE COURT: Let's talk about your attorney for a minute. Has your attorney done all of the things that you've asked him to do so far?

{¶41} "THE DEFENDANT: Yes, he has.

{¶42} "THE COURT: Is there anything that you would like for him to do or you think ought to be done that's not yet done, like talk to a witness, file some motion, get a lab report, anything at all?

{¶43} "THE DEFENDANT: I feel like he did everything he could.

{¶44} "THE COURT: Is there anything he's done that you wished he'd done differently?

{¶45} "THE DEFENDANT: No, sir.

{¶46} "THE COURT: Is it fair to say that you are satisfied with your representation so far?

{¶47} "THE DEFENDANT: Yes.

{¶48} "THE COURT: Have you had enough time to discuss all this with your attorney so you understand all the in's and out's of your case.

{¶49} "THE DEFENDANT: Yes, I have." (Tr. 15-16).

{¶50} In this conversation, the court made amply sure that appellant was satisfied with his counsel's representation. This was appellant's chance to speak up if he felt that his attorney failed to interview witnesses, failed to discuss the facts of the case, or failed to explain his plea to him. Appellant did not do so. Instead, he told the court that he was completely satisfied with his counsel.

{¶51} Finally, appellant alleged that his counsel failed to present mitigation evidence at sentencing. This is simply not true. Prior to sentencing, appellant's counsel made a statement to the court in mitigation of appellant's sentence. Specifically, counsel brought up appellant's extensive family support and loving home. (Tr. 17). He further pointed out that appellant had no prior criminal record. (Tr. 17). Finally, counsel pointed to appellant's "intense amount of remorse" for his actions. (Tr. 17). Counsel presented these factors to the court to consider as mitigating factors in sentencing appellant.

{¶52} One other fact is worth mentioning. Appellant waited a year-and-a-half after entering his plea before filing his motion to withdraw it. This delay weighs against appellant. The facts he allege would have been apparent to him immediately after his sentencing. Thus, it weighs against appellant's credibility that he waited so long to file his motion to withdraw his plea.

{¶53} In sum, all of appellant's allegations are refuted by the record. The "facts" that he alleged have no support and, instead, are unfounded. Consequently, appellant was not entitled to a hearing on his Crim.R. 32.1 motion. Furthermore, the trial court did not err in denying his motion.

{¶54} Accordingly, appellant's sole assignment of error is without merit.

{¶55} For the reasons stated above, the trial court's judgment is hereby affirmed.

Waite, J., concurs.

DeGenaro, J., concurs.