

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
COLUMBIANA COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

JERMAINE L. JACKSON,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 19 CO 0037

Criminal Appeal from the
Court of Common Pleas of Columbiana County, Ohio
Case No. 17 CR 359 LY

BEFORE:

Gene Donofrio, Carol Ann Robb, David A. D'Apolito, Judges.

JUDGMENT:

Affirmed

Atty. Micah R. Ault, Assistant Attorney General, Office of the Ohio Attorney General, 615 W. Superior Avenue, 11th Floor, Cleveland, OH 44113, *Atty. Robert Herron*, Prosecuting Attorney, *Atty. John Gamble*, Assistant Prosecuting Attorney, 105 South Market Street, Lisbon, Ohio 44432, for Plaintiff-Appellee and

Atty. Scott Essad, 721 Boardman-Poland Road, Suite 201, Youngstown, Ohio 44512,
for Defendant-Appellant.

Dated:
June 18, 2021

Donofrio, J.

{¶1} Defendant-appellant, Jermaine Jackson appeals from a Columbiana County Common Pleas Court judgment overruling his presentence motion to withdraw his guilty plea to charges of engaging in a pattern of corrupt activity, three counts of trafficking in heroin, three counts of aggravated trafficking in drugs, trafficking in marijuana, corrupting another with drugs, three counts of trafficking in cocaine, and having weapons while under disability.

{¶2} On October 27, 2017, a Columbiana County Grand Jury indicted appellant, along with 99 other defendants, in a 756-count indictment named “Operation Big Oak.” The indictment specifically charged appellant with 21 counts:

Count 1: Engaging in a pattern of corrupt activity, a first-degree felony in violation of R.C. 2923.32(A)(1);

Count 9: Trafficking in heroin, a fifth-degree felony in violation of R.C. 2925.03(A)(1)(C)(6);

Count 10: Aggravated trafficking in drugs, a fourth-degree felony in violation of R.C. 2925.03(A)(1)(C)(1);

Count 13: Trafficking in marijuana, a fifth-degree felony in violation of R.C. 2925.03(A)(1)(C)(3);

Count 14: Corrupting another with drugs, a second-degree felony in violation of R.C. 2925.02(A)(3);

Count 48: Trafficking in marijuana, a fifth-degree felony in violation of R.C. 2925.03(A)(1)(C)(3)(a);

Count 49: Trafficking in heroin, a fourth-degree felony in violation of R.C. 2925.03(A)(1)(C)(6)(a);

Count 50: Trafficking in cocaine, a third-degree felony in violation of R.C. 2925.03(A)(1)(C)(4)(d);

Count 51: Aggravated trafficking in drugs, a fourth-degree felony in violation of R.C. 2925.03(A)(1)(C)(1)(a);

Count 52: Having weapons while under disability, a third-degree felony in violation of R.C. 2923.13(A)(3);

Count 53: Aggravated trafficking in drugs, a third-degree felony in violation of R.C. 2925.03(A)(1)(C)(1)(c);

Count 54: Aggravated trafficking in drugs, a fourth-degree felony in violation of R.C. 2925.03(A)(1)(C)(1)(a);

Count 55: Aggravated trafficking in drugs, a third-degree felony in violation of R.C. 2925.03(A)(1)(C)(1)(a)(b);

Count 56: Trafficking in marijuana, a fifth-degree felony in violation of R.C. 2925.03(A)(1)(C)(3)(a);

Count 57: Aggravated trafficking in drugs, a third-degree felony in violation of R.C. 2925.03(A)(1)(C)(1)(c);

Count 58: Trafficking in cocaine, a third-degree felony in violation of R.C. 2925.03(A)(1)(C)(4)(d);

Count 59: Aggravated trafficking in drugs, a second-degree felony in violation of R.C. 2925.03(A)(2)(C)(1)(c), with a forfeiture specification;

Count 60: Aggravated trafficking in drugs, a second-degree felony in violation of R.C. 2925.03(A)(1)(C)(1)(d), with a forfeiture specification;

Count 61: Trafficking in heroin, a second-degree felony in violation of R.C. 2925.03(A)(1)(C)(6)(e), with a forfeiture specification;

Count 62: Trafficking in cocaine, a first-degree felony in violation of R.C. 2925.03(A)(1)(C)(4)(f), with a forfeiture specification; and

Count 63: Having weapons while under disability, a third-degree felony in violation of R.C. 2923.13(A)(3).

{¶3} Appellant initially pleaded not guilty. After engaging in negotiations, appellant entered into a plea agreement with plaintiff-appellee, the State of Ohio.

{¶4} Pursuant to the plea agreement, appellant entered guilty pleas to Counts 1, 9, 10, 13, 14, 49, 50, 52, 55, 58, 59, 61, and 62. In exchange, the state agreed to dismiss the remaining eight counts and to recommend an eight-year total prison term. The trial court held a change of plea hearing on April 6, 2018, and accepted appellant's guilty plea. The court scheduled the matter for a sentencing hearing on July 30, 2018.

{¶5} On July 18, 2018, appellant filed a pro se motion to withdraw his guilty plea. He stated that he entered the agreement under duress, was not properly advised by his counsel, and had recently discovered new evidence of his innocence. On July 25, 2018, appellant's court-appointed counsel filed a motion to withdraw, stating that appellant wished to hire another attorney. The trial court set a hearing on the motions.

{¶6} The court called the matter for hearing on July 30, 2018. Appellant failed to appear. The court subsequently revoked appellant's bond and issued a bench warrant for his arrest. It stated that it would refrain from ruling on the motions until appellant was apprehended. Almost nine months later, appellant was apprehended and on May 22, 2019, the court scheduled the matter for hearings on the outstanding motions. At a June 24, 2019 hearing, the court granted counsel's motion to withdraw and appointed new counsel.

{¶7} At a July 12, 2019 hearing, the trial court overruled appellant's motion to withdraw his guilty plea and scheduled the case for a sentencing hearing.

{¶8} The court subsequently sentenced appellant to prison terms on each of the 13 offenses ranging from nine months to eight years. The court ordered appellant to

serve his sentences concurrently, totaling an eight-year prison term. The court also ordered forfeitures in the amounts of \$614 and \$1,663.

{¶19} Appellant filed a timely notice of appeal on October 1, 2019. Due to a change in appellate counsel and several requests for extensions of time by both parties, briefing was not completed until October 2, 2020. Appellant now raises a single assignment of error.

{¶10} Appellant's sole assignment of error states:

THE TRIAL COURT ERRED WHEN IT REJECTED JERMAINE JACKSON'S MOTION TO WITHDRAW HIS GUILTY PLEA.

{¶11} Appellant argues the trial court should have granted his motion to withdraw his guilty plea. He claims that the majority of the factors under consideration for whether to grant a motion to withdraw a plea weighed in his favor. He points out that he took issue with the notifications his counsel gave him, he wanted to go to trial, he became aware of new evidence that could help to prove his innocence, and it was 14 months from the time he filed his motion until the court held a hearing on it.

{¶12} Crim.R. 32.1, which governs the withdrawal of a guilty plea, 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." This rule establishes a fairly strict standard for deciding a post-sentence motion to withdraw a guilty plea but provides no guidelines for deciding a presentence motion. *State v. Xie*, 62 Ohio St.3d 521, 526, 584 N.E.2d 715 (1992).

{¶13} A decision on a presentence plea withdrawal motion is within the trial court's sound discretion. *Id.* at 526. Therefore, we will not reverse the trial court's decision absent an abuse of discretion. Abuse of discretion means that the trial court's decision was unreasonable, arbitrary, or unconscionable. *State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980).

{¶14} The Ohio Supreme Court has stated that a presentence motion to withdraw a plea should be "freely and liberally" granted. *Xie*, at 527. But the Court has also recognized that a "defendant does not have an absolute right to withdraw a plea prior to

sentencing.” *Id.* Therefore, the trial court must conduct a hearing on the motion to decide if there is a reasonable and legitimate basis for it. *Id.*

{¶15} This court has adopted nine factors to weigh in considering a presentence motion to withdraw a plea: (1) whether the state will be prejudiced by withdrawal; (2) the representation afforded to the defendant by counsel; (3) the extent of the Crim.R. 11 plea hearing; (4) whether the defendant understood the nature of the charges and potential sentences; (5) the extent of the hearing on the motion to withdraw; (6) whether the trial court gave full and fair consideration to the motion; (7) whether the timing of the motion was reasonable; (8) the reasons for the motion; and (9) whether the accused was perhaps not guilty or had a complete defense to the charge. *State v. Thomas*, 7th Dist. Mahoning Nos. 96CA223, 96CA225, 96CA226, 1998 WL 934645 (Dec. 17, 1998), citing *State v. Fish*, 104 Ohio App.3d 236, 240, 661 N.E.2d 788 (1st Dist.1995). Consideration of the factors is a balancing test and no one factor is conclusive. *Id.*

{¶16} Thus, we must consider these nine factors in determining whether the trial court abused its discretion in denying appellant’s motion to withdraw his plea.

{¶17} The first factor is whether the state will be prejudiced by the withdrawal of the guilty plea. At the hearing on the motion, the trial court pointed out that appellant did not appear at the scheduled hearing on July 30, 2018, which caused the court to issue a warrant. (July 12, 2019 Tr. 6). Approximately nine months lapsed before appellant was apprehended on the warrant. As to this time lapse, the trial court found, “the time that has lapsed is prejudicial to the State of Ohio to now try your case after they have already entered into meaningful plea negotiations[.]” (July 12, 2019 Tr. 6).

{¶18} Had appellant appeared in July 2018, just after he filed his motion, his argument that the state would not be prejudiced would be more compelling. But instead, appellant filed his motion and then disappeared for almost nine months causing the prejudice to the state to grow as time went on. Thus, this factor weighs in favor of denying the motion to withdraw.

{¶19} The second factor is the representation afforded to the defendant by counsel. The trial court found that appellant has had more than one attorney during this case and all have advised him well. (July 12, 2019 Tr. 5). It pointed out that appellant was facing more charges than those he pleaded to and found that appellant’s counsel

engaged in “thoughtful, meaningful discussion” with the prosecutor during negotiations. (July 12, 2019 Tr. 5).

{¶20} Appellant was facing 21 felony charges and a potential prison sentence of over 80 years. His counsel was able to negotiate a plea deal dismissing eight felony charges and agreeing to a total sentence of eight years. Thus, his counsel was able to negotiate a favorable deal for appellant. Moreover, appellant indicated at his change-of-plea hearing that his counsel explained everything to him and he was satisfied with his representation. (April 6, 2018 Tr. 6, 7-8, 13-14). There is no indication on the record that his counsel did not zealously represent him. Thus, the second factor weighs in favor of overruling appellant’s motion to withdraw.

{¶21} The third factor examines the extent of the change-of-plea hearing. The trial court stated that it reviewed the transcript of the hearing. (July 12, 2019 Tr. 4). It found that the previous judge conducted a thorough colloquy with appellant addressing all of his rights, the elements of the offenses, whether he was satisfied with his counsel’s representation, and whether he understood the hearing and plea agreement. (July 12, 2019 Tr. 4-5).

{¶22} The trial court’s findings are supported by the record. A review of the change-of-plea hearing transcript demonstrates that the trial court addressed appellant and covered each of the items in detail as set out by the trial court. (April 6, 2019 Tr. 6-14). Thus, the third factor weighs in favor of denying appellant’s motion to withdraw.

{¶23} The fourth factor requires a review of whether the defendant understood the nature of the charges and potential sentences at the time he entered his plea. The trial court again cited to the transcript of the change-of-plea hearing and found that the previous judge thoroughly discussed the charges and potential sentences with appellant. (July 12, 2019 Tr. 6).

{¶24} Once again, the trial court’s finding is supported by the record. At the change-of-plea hearing, the trial court asked appellant about a document he signed titled “Judicial Advice to the Defendant.” (April 6, 2018 Tr. 7). The court reiterated to appellant that this form listed all of the charges to which he was pleading and set out the minimum and maximum sentences for each count. (April 6, 2018 Tr. 7). Appellant stated that he went over all that information with his attorney and he was confident that he understood

the offenses and the potential penalties he faced. (April 6, 2018 Tr. 7-8). The court then asked appellant if he would like it to go through them once again with him. (April 6, 2018 Tr. 8). Appellant declined the court's offer. (April 6, 2018 Tr. 8). This colloquy demonstrates that the court took the time to make sure appellant understood the charges he was pleading to and the potential sentences. Thus, the fourth factor weighs in favor of denying appellant's motion.

{¶25} The fifth factor requires us to review the extent of the hearing on the motion to withdraw. The trial court conducted an extensive hearing on appellant's motion. The court heard arguments from both appellant and his counsel. It entertained each of appellant's arguments and explained to appellant the conclusions it reached. (July 12, 2019 Tr. 6-13). It also made sure to discuss all of the factors and explained its reasoning as to each one. Because the trial court held an extensive hearing on the matter, the fifth factor weighs in favor of denying appellant's motion.

{¶26} The sixth factor is similar to the fifth. It requires this court to look at whether the trial court gave full and fair consideration to appellant's motion. As discussed above, prior to the hearing the trial court reviewed the transcript from appellant's change-of-plea hearing. It then conducted a comprehensive hearing listening to appellant and his counsel, detailing each factor, and setting out its reasons for reaching the conclusions it did. Because the trial court gave appellant's motion full and fair consideration, the sixth factor weighs in favor of denying appellant's motion.

{¶27} The seventh factor addresses whether the timing of the motion was reasonable. Appellant entered his guilty plea on April 6, 2018. At that time, the trial court set the matter for sentencing on July 30, 2018. Appellant filed his motion to withdraw his plea on July 18, 2018, approximately three months after entering it and a week-and-a-half before his sentencing date. But there is another time period to take into consideration. After appellant filed his motion to withdraw, he failed to appear in court and eluded law enforcement for almost nine months before he was apprehended. Thus, while the timing of the motion itself may not have been unreasonable, appellant's actions after he filed the motion and the delay that he caused in allowing it to be heard were unreasonable.

{¶28} The eighth factor assesses the reasons for the motion. In his motion, appellant stated that he took the plea agreement under duress, his counsel did not advise him of the ramifications of the plea, he entered the plea because of “off-the-record promises,” new evidence of his innocence has surfaced, and he felt as though he had a viable chance at trial. (July 6, 2019 Tr. 3). Most of these bases for appellant’s motion, however, are not supported by the record.

{¶29} At the change-of-plea hearing, the trial court specifically asked appellant if his counsel discussed with him all of the minimum and maximum sentences associated with each count that he was charged with. (April 6, 2018 Tr. 7). Appellant indicated that he did indeed discuss these things with his counsel. (April 6, 2018 Tr. 7). Appellant further indicated that he was confident that he understood the offenses he was indicted on, the offenses he was pleading to, and minimum and maximum penalties for each. (April 6, 2018 Tr. 8). The court also asked appellant if anyone was forcing him to enter a plea, to which he responded “no,” and whether he was pleading voluntarily, to which he responded “yes.” (April 6, 2018 Tr. 9-10). The court also asked him if anyone had made any promises to him to induce his plea, to which he responded “no.” (April 6, 2018 Tr. 9-10). Appellant also indicated to the court that he was satisfied with his counsel and that his counsel had answered all of his questions and explained everything to him. (April 6, 2018 Tr. 13-14). As to the “new” evidence that would support his defense, appellant seemed to believe that the state did not have evidence of him selling drugs in Columbiana County. (July 12, 2019 Tr. 6-8). The trial court explained to him that this case involved wire taps and involved activity in Columbiana, Cuyahoga, and Medina Counties. (July 12, 2019 Tr. 8-9). Thus, the eighth factor does not weigh in favor of granting appellant’s motion.

{¶30} The ninth and final factor looks at whether the defendant was perhaps not guilty or had a complete defense to the charges. In his motion appellant asserted that new evidence had surfaced and he believed he had a viable chance at trial. At his motion hearing, appellant argued that he believed there were issues with a search warrant and wire taps during the investigation in this case. (July 21, 2019 Tr. 6-7, 9).

{¶31} Appellant never actually asserted that he was innocent of all charges. He raised some alleged evidentiary issues that he believed might help his case. But at his

sentencing hearing, he did state that he regretted that anyone was harmed by his actions and asked God's forgiveness for hurting anyone. (Sept. 23, 2019 Tr. 9). Thus, the final factor does not weigh in appellant's favor.

{¶32} Given the above analysis, the factors weigh in favor of denying appellant's motion to withdraw his plea. There is no indication that the trial court acted arbitrarily, unreasonably, or unconscionably in doing so.

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

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

Robb, J., concurs.

D'Apolito, J., concurs.

For the reasons stated in the Opinion rendered herein, the sole assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Columbiana County, Ohio, is affirmed. Costs to be waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.