

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

BRUCE LEE MEYERS,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 23 MA 0003

Criminal Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 22 CR 358

BEFORE:

Cheryl L. Waite, Mark A. Hanni, Judges, and William A. Klatt, Judge of the
Tenth District Court of Appeals, Sitting by Assignment (Retired).

JUDGMENT:

Affirmed.

Atty. Gina DeGenova, Mahoning County Prosecutor and *Atty. Edward A. Czopur*,
Assistant Prosecutor, for Plaintiff-Appellee

Atty. Mark J. Lavelle, for Defendant-Appellant

Dated: March 21, 2024

WAITE, J.

{¶1} Appellant Bruce Lee Meyers appeals his conviction and sentence for attempted rape. Appellant pleaded guilty to the charge based on a Crim.R. 11 plea agreement. He was immediately sentenced to an indefinite sentence of ten to fifteen years in prison as authorized by statutory changes pursuant to the 2019 Reagan Tokes Act. Appellant raises three arguments on appeal. He contends that the indefinite nature of his sentence violated his right to a jury trial and is unconstitutional. However, the Ohio Supreme Court recently ruled on the issue raised by Appellant and held that the Reagan Tokes Act does not violate the right to a jury trial. *State v. Hacker*, 173 Ohio St.3d 219, 2023-Ohio-2535, ¶ 28. Appellant also argues that he was incompetent to stand trial and that the court should have granted his post-sentence motion to withdraw his plea. The issue of Appellant's competence was thoroughly examined by the trial judge and there was no abuse of discretion in the decision to find him competent to stand trial. Appellant's motion to withdraw was largely based on his alleged incompetence to stand trial, which had already been determined by the trial judge. His additional claim that he did not understand the terms of his plea or that he was not in his right mind when he pleaded guilty are not supported by the record. Appellant's three assignments of error are overruled and the judgment of the trial court is affirmed.

Facts and Procedural History

{¶2} On July 7, 2022, Appellant was indicted on two counts of rape pursuant to R.C. 2907.02(A)(1) (life sentence); two counts of gross sexual imposition under R.C. 2907.05(A)(4), third degree felonies; and one count of attempted rape pursuant to R.C. 2907.02(A)(1)(b) and R.C. 2923.02, a first degree felony. The victim was a four-year-old

girl who lived in the same home as Appellant. On August 2, 2022, Appellant's counsel filed a motion for a competency and sanity evaluation. The state did not object, and the court ordered a competency evaluation. Dr. Jessica Hart conducted the evaluation and testified as to her findings and conclusions at a hearing held on October 19, 2022. No other evidence regarding competency was presented at the hearing. On October 31, 2022, the court filed a judgment entry finding Appellant was competent to stand trial. Jury trial was set for November 7, 2022, and was continued to December 19, 2022.

{¶3} On December 15, 2022, Appellant entered into a Crim.R. 11 plea agreement. Appellant agreed to plead guilty to count five in the indictment, attempted rape, and the state agreed to dismiss all of the other charges. The parties agreed to request a prison term of 10 to 15 years. The court accepted the plea and proceeded immediately to sentencing, where it accepted the jointly recommended sentence. The court sentenced Appellant to an indefinite term of 10 to 15 years in prison, and designated him a Tier III Sex Offender. The sentencing entry was filed on December 21, 2022.

{¶4} On January 3, 2023, the court received a hand-written note from Appellant requesting to withdraw his guilty plea. The court held a hearing on the motion to withdraw on January 10, 2023. The court determined that no manifest injustice had occurred to justify withdrawing the plea, and the motion to withdraw was overruled in an entry filed on January 12, 2023. This appeal followed on January 13, 2023.

{¶5} Appellant's second and third assignments of error will be taken out of order because the second assignment is premised on arguments made in the third assignment.

ASSIGNMENT OF ERROR NO. 1

AS AMENDED BY THE REAGAN TOKES ACT, THE REVISED CODE'S SENTENCES FOR QUALIFYING FELONIES VIOLATES THE CONSTITUTIONS OF THE UNITED STATES AND STATE OF OHIO.

{¶6} Appellant posits two reasons why the indefinite portion of his sentence is unconstitutional. First, Appellant argues that the right to a trial by jury is protected by the Sixth Amendment of the United States Constitution, and Article I, Section 5 of the Ohio Constitution. Appellant contends that a sentence relying on judicial factfinding that goes beyond the facts that could be found by a jury violates the right to a jury trial. Appellant cites *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002), and *Blakely v. Washington*, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004), in support.

{¶7} Appellant argues that The Reagan Tokes Act, contained in part in R.C. 2967.271, allows the Department of Rehabilitation and Correction (DRC) to enhance a sentence beyond the possible sentence allowed by a jury verdict because it adds an indefinite term to the sentence for certain felonies. See R.C. 2929.144. The Reagan Tokes Act requires a judge to impose a minimum sentence, and then allows the DRC to add prison terms up to fifty percent more than the imposed minimum prison term. The range for the minimum prison terms is found in R.C. 2929.14. Appellant contends that granting the DRC power to add time to a sentence based on facts not presented to a jury is a facial constitutional violation of his right to a jury trial, and that the Reagan Tokes Act is unconstitutional.

{¶8} The federal cases cited by Appellant held that maximum, consecutive, or enhanced federal sentences reliant on judicial findings that go beyond the facts found by a jury violated the defendants’ right to a trial by jury. In each of these cases the sentence imposed went beyond the sentence that would have been permitted solely based on the facts found by the jury. The Ohio Supreme Court relied on these cases to come to the same conclusion regarding certain of Ohio’s other sentencing statutes. *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, abrogated by *Oregon v. Ice*, 555 U.S. 160, 172 L.Ed.2d 517, 129 S.Ct. 711 (2009).

{¶9} Appellee responds that the exact issue being argued by Appellant was at issue in the recent case of *State v. Hacker*, 173 Ohio St.3d 219, 2023-Ohio-2535, and was rejected. Appellee is correct. *Hacker* involved the following issue: “[Appellant] protests that R.C. 2967.271 violates his right to a jury trial because the DRC is authorized to maintain his incarceration beyond the minimum prison term set by the trial court without any jury findings to support the extended incarceration.” *Id.* at ¶ 26. *Hacker* reviewed the exact caselaw Appellant cites in the instant appeal. *Hacker* summarized the holding of those cases as: “[I]t is unconstitutional for a legislature to remove from the jury the assessment of facts that increase the prescribed range of penalties to which a criminal defendant is exposed.” *Id.* at ¶ 27.

{¶10} *Hacker* concluded, however, that under the new sentencing provisions of the Reagan Tokes Act:

[T]he ‘prescribed range of penalties’ is determined upon the return of a guilty verdict—or, as in the cases before us, when the offender pleads guilty to the charged offenses. Once an offender is found guilty of an eligible

offense, the trial court has the discretion to sentence him to any minimum sentence within the appropriate range. R.C. 2929.14(A)(1)(a) and (2)(a). And the maximum sentence is calculated based on that minimum sentence. *Id.*; R.C. 2929.144(B)(1). Because no determination by the DRC regarding [Appellant’s] behavior while in prison will change the range of penalties prescribed by the legislature and imposed by the trial court, the right to a jury trial is not implicated.

Id. at ¶ 28. Hence, the *Hacker* Court concluded that the Reagan Tokes Act did not violate the right to a trial by jury and was constitutional.

{¶11} Appellant also argues that his indefinite sentence is unconstitutional because it violates the separation of powers doctrine. Although there is no specific constitutional provision proclaiming the doctrine of separation of powers, it is “implicitly embedded in the entire framework of those sections of the Ohio Constitution that define the substance and scope of powers granted to the three branches of state government.” *S. Euclid v. Jemison*, 28 Ohio St.3d 3d 157, 159, 503 N.E.2d 136 (1986). Separation of powers provides that “each branch of a government [must] be permitted to exercise its constitutional duties without interference from the other two branches of government.” *State ex rel. Dann v. Taft*, 109 Ohio St.3d 364, 2006-Ohio-1825, 848 N.E.2d 472, ¶ 56. Appellant argues that the Reagan Tokes Acts removes part of the judicial branch’s power to sentence and relocates it in an agency of the executive branch, the DRC.

{¶12} Appellant argues that the DRC’s control over the indefinite part of his sentence is akin to the “bad time” sentencing enhancements found in former R.C. 2967.11. In *State ex rel. Bray v. Russell*, 89 Ohio St.3d 132, 729 N.E.2d 359 (2000), the

Ohio Supreme Court held that R.C. 2967.11 was unconstitutional. The issue in *Russell* was whether R.C. 2967.11 violated the separation of powers by granting the Adult Parole Authority (“ADA”) power to add time to a prison sentence for crimes committed in prison. *Russell* held that the ADA, being an agency of the executive branch, could not try, convict, and sentence inmates for crimes committed in prison, those all being functions of the judicial branch.

{¶13} *Hacker* addressed this question as well. *Hacker* held that an indefinite sentence does not violate separation of powers because the trial court, not the DRC, sets the minimum and maximum sentence, and the DRC can only operate within the bounds set by the trial court at sentencing. *Hacker* at ¶ 16. *Hacker* specifically compared the Reagan Tokes Act with former R.C. 2967.11 and found the Reagan Tokes Act was constitutional.

{¶14} Appellant’s first assignment of error is overruled based on the analysis and holding of *Hacker*.

ASSIGNMENT OF ERROR NO. 3

THE TRIAL COURT ERRED IN FINDING APPELLANT COMPETENT TO
STAND TRIAL.

{¶15} Appellant believes that he was not competent to stand trial, and that the trial court incorrectly allowed him to enter into a Crim.R. 11 guilty plea even though he was incompetent. A criminal defendant is rebuttably presumed to be competent to stand trial. *State v. Barton*, 108 Ohio St.3d 402, 2006-Ohio-1324, 844 N.E.2d 307, ¶ 56, citing R.C. 2945.37(G). The court may declare that a defendant is incompetent to stand trial if, after

a hearing, it finds by a preponderance of the evidence that “the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense[.]” R.C. 2945.37(G). A competency determination is reviewed for abuse of discretion. *State v. Were*, 118 Ohio St.3d 448, 2008-Ohio-2762, 890 N.E.2d 263, ¶ 53.

{¶16} The test for competency is whether the defendant “has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him.” *State v. Lawson*, 165 Ohio St.3d 445, 2021-Ohio-3566, 179 N.E.3d 1216, ¶ 49, quoting *Dusky v. United States*, 362 U.S. 402, 80 S.Ct. 788, 4 L.Ed.2d 824 (1960).

{¶17} “A trial court may not find a defendant incompetent to stand trial or plead guilty solely because he suffers from a mental illness or a learning or intellectual disability.” *State v. Garber*, 6th Dist. Sandusky No. S-21-018, 2022-Ohio-3770, ¶ 12, quoting *State v. Moore*, 8th Dist. Cuyahoga No. 108962, 2020-Ohio-3459. “A defendant suffering from an emotional or mental disability or a learning disability may still possess the ability to understand the charges and proceedings against him or her and be able to assist in his or her defense.” *Moore* at ¶ 41. “The test for competency focuses entirely on the defendant's ability to understand the meaning of the proceedings against him and his ability to assist in his own defense, which can be satisfied regardless of the defendant's mental status or IQ.” *Id.*

{¶18} Appellant did not present any evidence on this issue to the trial court. The state offered the testimony and report of Dr. Jessica Hart, a psychologist employed at the Forensic Psychiatric Center of Northeast Ohio. Based largely on his interpretation of Dr.

Hart's testimony, Appellant argues that he was unable to understand certain legal concepts or rights he gave up as part of his plea. Appellant does not rely on an accurate description of Dr. Hart's testimony, however. Appellant was not able to define "reasonable doubt" in response to a question from Dr. Hart, but the doctor testified that it was very common for defendants not to know the definitions for legal concepts. (10/19/22 Tr., p. 49.) Appellant contends that Dr. Hart established he did not understand the difference between a felony and a misdemeanor, however, Dr. Hart testified that Appellant did have a basic understanding that a felony was worse than a misdemeanor. (10/19/22 Tr., p. 28.) Appellant argues that he was not able to explain what rights he would be waiving by pleading guilty, but Dr. Hart testified that she did no assessment on that issue, as it was a function of the defendant's attorney and the trial judge, and that most people cannot explain the rights they are giving up when she does ask those questions. (10/19/22 Tr., p. 56.)

{¶19} Appellant argues that his answers to Dr. Hart's questions indicated he did not understand the role of the prosecutor. Dr. Hart testified that he did, in fact, satisfactorily describe the role of the prosecutor, as well as the role of his attorney, the judge, and the jury. (10/19/22 Tr., pp. 51-53.) Appellant was also able to explain, without prompting, the meaning of probation. He was able to describe what would happen if he was found not guilty. He understood the potential sentences in his case, including the possibility of a life sentence if he went to trial. He was also able to describe some basic criminal rights, such as the right to remain silent.

{¶20} Dr. Hart stated that Appellant scored 70 on an I.Q. test, and that people with such a score can function at an everyday level, take care of their own needs, have a job,

and be regular, functioning individuals in society. (10/19/22 Tr., p. 54.) She noted, for example, that Appellant was employed as a drywall installer when he was arrested. She also testified that Appellant had no history of mental health issues.

{¶21} Dr. Hart’s actual professional opinion was offered in two parts. She opined that Appellant could assist his lawyer in his defense, and that he had a knowledgeable understanding of the proceedings. (10/19/22 Tr., p. 58.) Appellant appears to argue that it was Dr. Hart’s responsibility to review the same ideas and legal theories that a trial judge would review when accepting a guilty plea, and ensure that Appellant could completely explain each and every concept. This is not the standard for determining competency. The trial judge’s comments at the end of the hearing are helpful, here: “[T]he ability or the determining [of] one’s competency to stand trial does not effect one’s ability to pass the Bar exam, so the reason a person is read his or her rights when in police custody is because it’s presumed they don’t know their rights and they have to be informed, and even if they do know their rights, they have to be reminded.” (10/19/22 Tr., p. 64.)

{¶22} The record reflects that the trial judge thoroughly reviewed Appellant’s competency to stand trial, had a full hearing on the issue, and based on the evidence and the judge’s actual interaction with Appellant, determined Appellant was competent to stand trial. The judge did not abuse his discretion in making the determination and Appellant’s third assignment of error is overruled.

ASSIGNMENT OF ERROR NO. 2

THE TRIAL COURT ERRED IN FAILING TO GRANT APPELLANT’S
POST-SENTENCE MOTION TO WITHDRAW HIS GUILTY PLEA.

{¶23} Appellant argues that his post-sentence motion to withdraw his guilty plea demonstrated a manifest injustice had occurred and should have been granted. “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.” Crim.R. 32.1. “[A] defendant seeking to withdraw a plea of guilty after sentence has the burden of establishing the existence of manifest injustice.” *State v. Smith*, 49 Ohio St.2d 261, 264, 361 N.E.2d 1324 (1977). A post-sentence plea withdrawal motion is warranted “only in extraordinary cases.” *Id.* The defendant must show withdrawal is “necessary” to correct manifest injustice. *State v. Stumpf*, 32 Ohio St.3d 95, 104, 512 N.E.2d 598 (1987).

{¶24} An appellate court reviews the disposition of a motion to withdraw a guilty plea for an abuse of discretion. *State v. Carabello*, 17 Ohio St.3d 66, 67, 477 N.E.2d 627 (1985). “Abuse of discretion means an error in judgment involving a decision that is unreasonable based upon the record; that the appellate court merely may have reached a different result is not enough.” *State v. Dixon*, 7th Dist. No. 10 MA 185, 2013-Ohio-2951, ¶ 21.

{¶25} Appellant’s motion to withdraw his guilty plea is reviewed based on three factors. First, the motion was filed very soon after sentencing, and there was no undue delay. This does weigh in Appellant’s favor because Appellant’s hand-written request to withdraw the plea was received by the court less than three weeks after the sentencing hearing and less than two weeks after the sentencing judgment entry was filed. Timely filing may indicate the motion was not based on a mere change of heart regarding the plea.

{¶26} Second, the plea was not entered into to “test the waters” as to a possible sentence, because the parties had agreed to a sentencing recommendation of 10 to 15 years in prison, and the trial judge imposed the agreed sentence. This also weighs in Appellant’s favor, because the maximum possible sentence that could have been imposed was only slightly longer than the agreed sentence.

{¶27} Third, Appellant argues that during the course of the case the record contains evidence that he was not mentally ready or able to enter into a valid guilty plea and that the judge should simply not have accepted his plea. The record does not support Appellant’s contention, however, and does not reflect Appellant suffered a manifest injustice. Appellant contends that early in the case he entered a plea of not guilty by reason of insanity. He was under a guardianship from the probate court when this case began. He requested and received a competency hearing. He contends his counsel was unsure of Appellant’s ability to understand his rights at the change of plea hearing. When the trial judge asked Appellant if he was ready to plead guilty to attempted rape, his initial answer was “Yeah, I really don’t know.” (12/14/22 Tr., p. 4.) Due to Appellant’s expressed ambivalence about entering a guilty plea on December 14, 2022, the trial judge continued the hearing to the next day. Appellant stated in his hand-written request to withdraw the plea that he “wasn’t actually in the right mind” at the time it was entered.

{¶28} None of these factors, whether taken individually or as a whole, indicates that a manifest injustice occurred requiring that the plea be withdrawn. Appellant’s mere assertion in his motion to withdraw that he was not in his right mind carries little if any weight. He also stated in his motion that he believed the prosecutor had no evidence to

offer at trial, which was obviously untrue because the state presented a witness list with thirteen names on it (including the victim) who were prepared to testify at trial.

{¶29} Appellant's competency to assist in his own defense and to stand trial were thoroughly reviewed by the court. Dr. Hart questioned Appellant about many aspects of his case and about trial procedure in general. Appellant was able at that time to understand, discuss, and even define (without being prompted) many of the terms and issues raised by the doctor. Despite Appellant's general uncertainty about entering a plea on December 14, 2022, the next day he was certain he agreed to plead guilty and expressed he was fully aware that the end result of entering the plea would be better than spending the rest of his life in prison. (12/15/22 Tr., p. 7.)

{¶30} Appellant has cited to a moment during the change of plea hearing in which the court asked Appellant "How do you plead?" Appellant answered: "Not guilty," but then immediately said "Or guilty." (12/15/22 Tr., p. 14.) Both the judge and Appellant's counsel were confused by this answer, and the judge asked him again: "All right. You want to plead guilty; is that correct?" Appellant immediately answered "Yes." (12/15/22 Tr., p. 15.) Other than this momentary confusion in answering the judge's question, nothing at the December 15, 2022 hearing reflects there was any ambivalence or lack of understanding by Appellant in making his guilty plea.

{¶31} At the change of plea hearing, the trial judge reviewed all the constitutional and non-constitutional rights that Appellant would waive by entering a guilty plea. Appellant gave appropriate answers to all of the judge's questions. At the change of plea hearing it appears that Appellant was fully aware of his rights and was ready to enter a guilty plea. Hence, the record does not reflect that a manifest injustice occurred and the

trial judge was within its discretion to overrule Appellant's post-sentence motion to withdraw his plea. Appellant's second assignment of error is overruled.

Conclusion

{¶32} Appellant has appealed his conviction and sentence for attempted rape. He challenges the indefinite nature of his ten-to-fifteen-year prison sentence on the grounds that the Reagan Tokes Act sentencing provisions violate his right to a jury trial and the doctrine of separation of powers. The Ohio Supreme Court has rejected both of these arguments in *State v. Hacker*, 173 Ohio St.3d 219, 2023-Ohio-2535. Appellant also argues that he was incompetent to stand trial and was likewise incompetent to enter a plea in this matter, and so the court should have granted his post-sentence motion to withdraw his plea. The trial court did not abuse its discretion in finding Appellant competent to stand trial, as it was based on evidence in the record, particularly the testimony of Dr. Hart who examined Appellant. As Appellant's motion to withdraw was based on his alleged incompetence to stand trial, which had already been determined by the trial judge, Appellant did not establish any manifest injustice allowing for the withdrawal of the plea. The trial court properly denied this motion. All of Appellant's assignments of error are overruled and the judgment of the trial court is affirmed.

Hanni, J. concurs.

Klatt, J. concurs.

For the reasons stated in the Opinion rendered herein, Appellant's assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs to be taxed against the Appellant.

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.