

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-09-1164

Appellee

Trial Court No. CR0200803621

v.

Eric Marcell Johnson

DECISION AND JUDGMENT

Appellant

Decided: September 30, 2010

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Michael D. Bahner, Assistant Prosecuting Attorney, for appellee.

Neil S. McElroy, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} This appeal is from the May 6, 2009 judgment of the Lucas County Court of Common Pleas, which sentenced appellant, Eric Johnson, after he was convicted by the court of violating R.C. 2925.03(A)(2) and (C)(4)(c), trafficking in cocaine, following the entry of his no contest plea. Upon consideration of the assignment of error, we affirm the decision of the lower court. Appellant asserts the following single assignment of error on appeal:

{¶ 2} "The trial court abused its discretion when it denied Mr. Johnson's pre-sentence motion to withdraw his plea."

{¶ 3} Appellant was indicted on November 5, 2008, and entered a not guilty plea to two felony charges, felonies of the fifth and third degree. Appellant's girlfriend and the mother of his child was also indicted on felony charges arising out of the same incident. A motion to suppress hearing was scheduled for February 26, 2009. At the beginning of that hearing, appellant changed his plea and entered a plea of no contest to a lesser-included fourth degree felony offense of trafficking in cocaine in violation of R.C. 2925.03(A)(2) and (C)(4)(c). The plea agreement involved a co-defendant pleading to a lesser charge to avoid a mandatory imprisonment term and appellant pleading to a lesser charge that could result in a sentence of imprisonment of six to eighteen months, but no minimum imprisonment was mandated by law. Appellant's sentencing hearing was set for March 23, 2009, and then continued to April 6, 2009, at appellant's request. On April 2, 2009, appellant moved to withdraw his no contest plea and requested an evidentiary hearing.

{¶ 4} Following a hearing on the motion to withdraw his plea on May 4, 2009, the court concluded that appellant had merely changed his mind about his plea and, therefore, denied his motion to withdraw his plea. The trial court then proceeded to sentence appellant and appellant appeals from that sentencing judgment.

{¶ 5} While there is no absolute right to withdraw a plea, generally the motion should be freely and liberally granted prior to sentencing. *State v. Xie* (1992), 62 Ohio St.3d 521, paragraph one of the syllabus. The trial court exercises its discretion when it

considers whether the circumstances of the case warrant the granting of the motion to withdraw the plea. *Id.* at paragraph two of the syllabus. On appeal, this determination will only be reversed upon a finding that the trial court abused its discretion. Therefore, we must find that the trial court made more than an error of judgment; the ruling must have been "unreasonable, arbitrary or unconscionable." *Id.* at 527, citing *State v. Adams* (1980), 62 Ohio St.2d 151, 157.

{¶ 6} Factual considerations that appellate courts have noted as relevant to the issue are: "(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) the extent of the hearing on the motion to withdraw; (5) whether the trial court gave full and fair consideration to the motion; (6) whether the timing of the motion was reasonable; (7) the reasons for the motion; (8) whether the defendant understood the nature of the charges and potential sentences; and (9) whether the accused was perhaps not guilty or had a complete defense to the charge." *State v. Murphy*, 176 Ohio App.3d 345, 2008-Ohio-2382, ¶ 39, citing *State v. Griffin* (2001), 141 Ohio App.3d 551, 554. A change of heart is an insufficient reason to permit withdrawal of the plea. *State v. Lawhorn*, 6th Dist. No. L-08-1153, 2009-Ohio-3216, ¶ 23, and *State v. Moore*, 7th Dist. No. 06-CO-74, 2008-Ohio-1039, ¶ 13.

{¶ 7} In the case before us, appellant asserts that in weighing the above factors, the balance weighs in favor of appellant. Appellant asserts that the trial court only considered two or three of the nine factors.

{¶ 8} We find appellant's argument meritless. While the court did not fully discuss each of the factors, there is nothing in the record to indicate that the trial court failed to properly consider all of the above factors. The court determined that appellant had not met his burden and concluded that it appeared only that appellant had a change of heart. We have examined the record in light of the factors indicated above and find that appellant has failed to demonstrate that the trial court abused its discretion by denying his motion to withdraw his plea. Appellant's sole assignment of error is not well-taken.

{¶ 9} Having found that the trial court did not commit error prejudicial to appellant and that substantial justice has been done, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is hereby ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.