

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 11AP-529
	:	(C.P.C. No. 10CR-10-5852)
Jason J. Johnson,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on December 13, 2011

Ron O'Brien, Prosecuting Attorney, and *Barbara A. Farnbacher*, for appellee.

Yeura R. Venters, Public Defender, and *Allen V. Adair*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶1} Jason J. Johnson is appealing the refusal of the trial court to allow him to withdraw his guilty plea to a charge of attempted gross sexual imposition, a felony of the fifth degree. He assigns a single error for our consideration:

The court erroneously refused to allow appellant to withdraw his guilty plea.

{¶2} Counsel for Jason filed a motion to withdraw the guilty plea before sentencing, so the withdrawal does not have to be granted only to correct a manifest injustice. See Crim.R. 32.1.

{¶3} Instead, motions to withdraw a guilty plea filed before sentencing are to be freely allowed, according to dictum in *State v. Xie* (1992), 62 Ohio St.3d 521. However, the syllabus in the *Xie* case reads:

1. A defendant does not have an absolute right to withdraw a guilty plea prior to sentencing. A trial court must conduct a hearing to determine whether there is a reasonable and legitimate basis for the withdrawal of the plea.

2. The decision to grant or deny a presentence motion to withdraw a guilty plea is within the sound discretion of the trial court.

{¶4} The trial judge in Johnson's case addressed the merits of his motion in open court and overruled the motion. We cannot overturn that decision unless we find an abuse of discretion.

{¶5} “The term ‘abuse of discretion’ connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable.” *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶6} An abuse of discretion connotes more than an error of judgment; it implies a decision that is arbitrary or capricious, one that is without a reasonable basis or clearly wrong. *Pembaur v. Leis* (1982), 1 Ohio St.3d 89; *Wise v. Ohio Motor Vehicle Dealers Bd.* (1995), 106 Ohio App.3d 562, 565; and *In re Ghali* (1992), 83 Ohio App.3d 460, 466.

{¶7} We cannot find an abuse of discretion in this case. Johnson was represented by experienced defense counsel. He entered his guilty plea in part in hope

that he would be released from jail until his sentencing. That, in fact, occurred. At the time he entered his plea, he was advised that he would be a Tier I sex offender with reporting requirements that were to apply to a sexually oriented offense at that level. He later decided he did not like the reporting requirements, but his change of heart does not make it an abuse of discretion for the judge to fail to set aside the guilty plea. The plea proceedings were carefully done in accord with Crim.R. 11 in all regards, including his admission of guilt.

{¶8} Again, we cannot say the trial court abused its discretion in refusing to allow Johnson to withdraw his guilty plea. We, therefore, overrule the sole assignment of error and affirm the judgment of the trial court.

Judgment affirmed.

KLATT, J., concurs.
DORRIAN, J., dissents.

DORRIAN, J., dissenting.

{¶9} I respectfully dissent from the judgment of the majority.

{¶10} The transcript of the April 4, 2011 plea hearing reveals that the trial court merely advised defendant that the offense would make him a Tier I sex offender (Tr. 3), and that it carries with it the requirement that he be *registered* as a Tier I sex offender. (Tr. 7.) The transcript does not reveal that the trial court advised defendant on the record, prior to defendant's entering his plea, the term of such Tier I sex offender status or his

reporting and other requirements during such term. The plea form likewise does not inform defendant of the term and reporting requirements.

{¶11} The transcript of the May 31, 2011 hearing reveals that, in response to the trial court's question as to whether the court explained the 15-year reporting requirement to defendant, defendant replied: "[I]t was explained to me." (Tr. 4.) Nevertheless, the same transcript reveals that, after the trial court denied defendant's motion to withdraw his guilty plea, defendant was then provided with a form which explained the duties to register as a sex offender. (Tr. 8.) The court advised the defendant's attorney to go over the form with defendant and have defendant sign it. The trial court then noted: "You've signed this form here acknowledging receipt of the notification as a Tier I sex offender, which places upon you a requirement for the next 15 years. You'll have to register annually with the sheriff where you live, and you understand that, sir?" (Tr. 9.)

{¶12} Because defendant was not advised of the term, reporting, and other requirements of Tier I sex offender status prior to entering his guilty plea, I would find that the trial court erred in denying defendant's presentence motion to withdraw his guilty plea.
