

[Cite as *State v. Knowles*, 2011-Ohio-4477.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 10AP-119
 : (C.P.C. No. 04CR-07-4891)
 Alawwal A. Knowles, :
 : (REGULAR CALENDAR)
 Defendant-Appellant. :

D E C I S I O N

Rendered on September 6, 2011

Ron O'Brien, Prosecuting Attorney, and *Seth L. Gilbert*, for
appellee.

Lisa Fields Thompson, for appellant.

APPEAL from the Franklin County Court of Common Pleas

CONNOR, J.

{¶1} Defendant-appellant, Alawwal A. Knowles ("appellant"), appeals from a judgment entered by the Franklin County Court of Common Pleas denying his motion to withdraw guilty plea. For the reasons that follow, we affirm the judgment of the trial court.

{¶2} On July 23, 2004, appellant was indicted in a multi-count indictment charging him with 13 counts of attempted murder, 13 counts of felonious assault, two counts of failure to comply with an order or signal of a police officer, and numerous firearm specifications. The charges arose from an altercation involving two of appellant's cousins. That altercation eventually resulted in appellant shooting both cousins multiple

times before fleeing in a vehicle and leading police on an extensive chase that involved additional gunfire, causing injury to one officer and damage to the personal property of various residents in the area.

{¶3} On July 12, 2005, appellant entered pleas of guilty to three counts of attempted murder, all with three-year firearm specifications, and two counts of felonious assault without the firearm specifications. The parties did not recommend a sentence as part of the plea bargain. The plea form signed by appellant, his counsel, the prosecuting attorney, and the trial judge included a provision which stated appellant would be subject to a mandatory five-year period of post-release control if a prison term was imposed at sentencing. It also set forth the more restrictive sanctions which could be imposed if appellant violated post-release control.

{¶4} On September 14, 2005, a sentencing hearing was held. At the sentencing hearing, appellant signed a "Prison Imposed" notice which notified appellant of a five-year period of post-release control and the possibility of the imposition of more restrictive sanctions in the event that he violated post-release control. The trial court imposed an aggregate sentence of 39 years of incarceration. A judgment entry journalizing this sentence was filed on September 15, 2005.

{¶5} Appellant did not file a timely direct appeal. However, on December 9, 2005, appellant, pro se, filed a motion for leave to appeal from the September 2005 judgment entry, as well as motions for appointment of counsel and for preparation of the transcripts at state expense. In his motion for leave to file a delayed appeal, appellant stated he was unable to file a timely appeal due to a lack of counsel subsequent to the plea and a lack of knowledge that an appeal could be filed from a plea under certain

circumstances. On January 24, 2006, we denied all three motions, finding the plea form indicated appellant was aware of his appellate rights and, furthermore, any lack of knowledge was not a sufficient reason to explain a failure to timely file a notice of appeal. *State v. Knowles* (Jan. 24, 2006), 10th Dist. No. 05AP-1312 (memorandum decision). On May 24, 2006, the Supreme Court of Ohio denied leave to appeal and dismissed the appeal.

{¶6} On July 20, 2006, appellant, pro se, filed a second motion for leave to file a delayed appeal, asserting he lacked legal knowledge and experience and had been under psychiatric care and thus was unable to timely file a notice of appeal. On August 29, 2006, we again denied appellant's motions for leave to file a delayed appeal, for appointment of counsel, and for preparation of a transcript, concluding his additional reasons for filing a delayed appeal failed to demonstrate a reasonable explanation for his failure to perfect a timely appeal. *State v. Knowles* (Aug. 29, 2006), 10th Dist. No. 06AP-756 (memorandum decision).

{¶7} On March 7, 2008, appellant filed a Crim.R. 32.1 motion to withdraw guilty plea in the common pleas court. In support of his motion, appellant argued: (1) his trial counsel coerced him to plead guilty; (2) he was not advised of the facts of the case prior to the plea; and (3) the trial judge refused to dismiss his trial counsel, even after appellant "fired" trial counsel in open court. On October 20, 2009, appellant filed a motion for extension and a motion to amend his request to withdraw his guilty plea with additional documentation. In these additional filings, appellant further argued he was innocent, he had been coerced into taking a plea, and his mental disorders had hindered his ability to make timely filings.

{¶8} On January 19, 2010, the trial court denied appellant's motion to amend and also denied the motion to withdraw his guilty plea. The trial court determined: (1) the motion to amend was untimely; (2) there was no evidence that appellant's plea was coerced; (3) appellant's claim of innocence was not supported by the record; (4) appellant did not adequately explain how his periods of mental health problems prevented him from filing the motion to withdraw guilty plea; and (5) appellant failed to demonstrate manifest injustice. On February 9, 2010, appellant filed a notice of appeal in this court. He subsequently filed a motion for appointment of counsel, which we granted. His appeal now asserts the following assignment of error for our review:

[I.] The trial court erred when it permitted Alawwal A. Knowles to enter a plea to the charges against him when that plea was not given knowingly, intelligently, and voluntarily.

{¶9} Appellant appeals the trial court's denial of his motion to withdraw guilty plea. In his sole assignment of error, appellant argues his plea was not knowingly, intelligently, and voluntarily entered because the trial court failed to properly comply with Crim.R. 11(C)(2)(a), in that it failed to ensure appellant understood the counts to which he was pleading guilty, as well as the maximum penalties involved, including that he would be subject to a mandatory five-year period of post-release control. Citing to *State v. Sarkozy*, 117 Ohio St.3d 86, 2008-Ohio-509, appellant further argues that, because he was not informed of post-release control before he entered his plea, his plea is invalid.

{¶10} Motions to withdraw guilty pleas are governed by Crim.R. 32.1, which provides as follows: "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."

{¶11} In the instant case, the motion to withdraw guilty plea was filed after sentencing. Thus, the trial court was required to determine whether granting the motion is necessary to correct a manifest injustice. "Manifest injustice relates to some fundamental flaw in the proceedings which result[s] in a miscarriage of justice or is inconsistent with the demands of due process." *State v. Williams*, 10th Dist. No. 03AP-1214, 2004-Ohio-6123, ¶5. Manifest injustice "is an extremely high standard, which permits a defendant to withdraw his guilty plea only in extraordinary cases." *State v. Tabor*, 10th Dist. No. 08AP-1066, 2009-Ohio-2657, ¶6, quoting *State v. Price*, 4th Dist. No. 07CA47, 2008-Ohio-3583, ¶11. A guilty plea that was not made knowingly, intelligently, or voluntarily, creates a manifest injustice and would entitle a defendant to withdraw the plea. *Williams* at ¶5.

{¶12} "A defendant who seeks to withdraw a plea of guilty after the imposition of sentence has the burden of establishing the existence of manifest injustice." *State v. Smith* (1977), 49 Ohio St.2d 261, paragraph one of the syllabus. A motion pursuant to Crim.R. 32.1 is addressed to the sound discretion of the trial court. *Id.* at paragraph two of the syllabus. Thus, appellate review of the trial court's denial of a post-sentence motion to withdraw guilty plea is limited to the determination of whether the trial court abused its discretion. *State v. Conteh*, 10th Dist. No. 09AP-490, 2009-Ohio-6780, ¶16. "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.

{¶13} The State of Ohio argues that appellant's claims are barred by res judicata. Under the doctrine of res judicata, "a final judgment bars a convicted defendant * * * from raising and litigating in any proceeding, except an appeal from that judgment, any defense or any claimed lack of due process the defendant raised or could have raised at trial or on appeal." *State v. Brown*, 167 Ohio App.3d 239, 2006-Ohio-3266, ¶7. We conclude, however, that we need not address the issue of res judicata.

{¶14} Regardless of whether the principles of res judicata apply, we find appellant's appeal improperly raises new issues for the first time which were not previously raised for consideration by the trial court.

{¶15} On appeal, appellant does not challenge the trial court's determinations that: appellant's claim of actual innocence was not supported by the record; there was no evidence that appellant's plea was coerced; and appellant failed to provide a reasonable explanation for how his purported periods of mental health problems prevented him from filing the instant motion for four years. Instead, appellant raises new arguments which were not previously raised in the trial court. In his appellate brief, appellant argues, for the first time, that his pleas were not intelligently, knowingly, and voluntarily made because the trial court failed to properly comply with Crim.R. 11(C)(2)(a) by failing to make certain appellant understood the counts to which he was pleading guilty, the maximum penalties involved, and that he would be subject to a mandatory five-year period of post-release control.

{¶16} Because appellant did not raise these issues in the trial court, these arguments have been waived. See *State v. Gripper*, 10th Dist. No. 10AP-1186, 2011-Ohio-3656, ¶11, citing *State v. Burge* (1993), 88 Ohio App.3d 91, 93; *State v. Comen*

(1990), 50 Ohio St.3d 206, 211; and *State v. Linehan* (Sept. 4, 1998), 2d Dist. No. 16841 ("[i]t is axiomatic that a litigant's failure to raise an issue in the trial court waives his right to raise that issue on appeal."). See also *State v. Gegia*, 157 Ohio App.3d 112, 2004-Ohio-2124, ¶33 and *Totten* at ¶9 (failure to present an argument in a post-sentence motion to withdraw guilty plea waives that argument for appeal purposes). Therefore, we find appellant waived the arguments he now attempts to make because he did not raise them in his motion to withdraw guilty plea filed in the trial court.

{¶17} Nevertheless, we find it necessary to briefly address the merits of the issue of notification of post-release control, given that the Supreme Court of Ohio recently determined that principles of res judicata, including the law of the case doctrine, do not preclude appellate review where the trial court fails to impose post-release control in accordance with the statutorily mandated terms, and therefore, the issue may be reviewed at any time.¹ *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, ¶30.

{¶18} In reviewing the transcripts of the plea proceedings and sentencing hearing, as well as the plea form, the sentencing entry and the post-release control notice, it is evident that the notice provided was sufficient and the trial court properly imposed post-release control. Appellant signed a plea form which stated he would be subject to five years of mandatory post-release control and also advised that a violation of post-release control could result in more restrictive sanctions, including a longer period of supervision and/or reimprisonment, as well as additional prison time for the commission of a new felony while on post-release control. (Entry of Guilty Plea; R. 92.) During the plea

¹ Appellant's arguments regarding post-release control appear to be mostly focused on notification of post-release control at the plea hearing and the requirements of Crim.R. 11, rather than notification at the sentencing hearing and in the judgment entry pursuant to the statutory requirements. However, in an effort to be thorough, we shall briefly address both aspects.

hearing, appellant acknowledged reading the plea form and discussing it with counsel, and he further indicated he understood the document. (Plea Tr. 11-12.) Additionally, appellant was orally advised at the sentencing hearing of a mandatory five-year post-release control term, as well as the possibility for additional time to be added to his sentence for violations of post-release control. (Sentencing Tr. 34-35.) The sentencing entry itself stated: "After the imposition of sentence, the Court notified the Defendant, orally and in writing, of the applicable periods of post-release control pursuant to R.C. 2929.19(B)(3)(c), (d) and (e)." (R. 107 at 2.) Finally, the "Prison Imposed" notice signed at the sentencing hearing explained post-release control and reflected imposition of a five-year period of post-release control, although it did not specify whether that term was mandatory or discretionary. The notice also advised that violations of post-release control may result in more restrictive sanctions, including a prison term. (R. 114.)

{¶19} We have previously found similar notifications to be sufficient and to constitute the proper imposition of post-release control. See *State v. Chandler*, 10th Dist. No. 10AP-369, 2010-Ohio-6534; *State v. Mays*, 10th Dist. No. 10AP-113, 2010-Ohio-4609; *State v. Cunningham*, 10th Dist. No. 10AP-452, 2011-Ohio-2045; *State v. Easley*, 10th Dist. No. 10AP-505, 2011-Ohio-2412; and *State v. Amburgy*, 10th Dist. No. 04AP-1332, 2006-Ohio-135. Furthermore, we believe that appellant received proper notification of post-release control at the plea hearing, based upon the notification set forth in the plea form and the trial court's inquiry into appellant's understanding of the form. This makes the instant case distinguishable from the facts in *Sarkozy*. In that case, there was absolutely no mention of post-release control at the plea hearing. "Rather, the court failed to mention postrelease control at all during the plea colloquy. Because the trial court

failed, before it accepted the guilty plea, to inform the defendant of the mandatory term of postrelease control, * * * the court did not meet the requirements of Crim.R. 11(C)(2)(a)." Id. at ¶22. The circumstances here are different.

{¶20} Based upon the foregoing analysis, we overrule appellant's single assignment of error and affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BRYANT, P.J., and FRENCH, J., concur.
