

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellee, : No. 19AP-152
 : (C.P.C. No. 16CR-3655)
 v. :
 : (ACCELERATED CALENDAR)
 Michael T. Morris, :
 :
 Defendant-Appellant. :

D E C I S I O N

Rendered on September 19, 2019

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

On brief: *Michael T. Morris*, pro se.

APPEAL from the Franklin County Court of Common Pleas

LUPER SCHUSTER, J.

{¶ 1} Defendant-appellant, Michael T. Morris, appeals from a judgment of the Franklin County Court of Common Pleas denying his successive motion to withdraw his guilty plea pursuant to Crim.R. 32.1. For the following reasons, we affirm.

I. Factual and Procedural Background

{¶ 2} In July 2016, the Franklin County Grand Jury indicted Morris on six counts of rape, all first-degree felonies, in violation of R.C. 2907.02, and one count of gross sexual imposition, a fourth-degree felony, in violation of R.C. 2907.05. Morris initially pleaded not guilty, and the matter proceeded to trial in May 2017. After the trial had commenced, Morris pleaded guilty to committing three first-degree felony counts of rape, in violation of R.C. 2907.02. A nolle prosequi was entered as to the remaining counts of the indictment. The trial court imposed the jointly recommended prison sentence of 6 years as to each count, to be served consecutively with each other, for a total sentence of 18 years.

{¶ 3} Morris did not timely appeal from the trial court's judgment of conviction and sentence, but in August 2017, he filed a motion for leave to file a delayed appeal. Because Morris failed to demonstrate a reasonable explanation for his failure to perfect a timely appeal, this court denied his delayed appeal request. *State v. Morris*, 10th Dist. No. 17AP-609 (Oct. 19, 2017) (memorandum decision). In January 2018, Morris requested leave to file a delayed appeal to the Supreme Court of Ohio, which denied that request.

{¶ 4} Additionally, on October 4, 2017 and pursuant to Crim.R. 32.1, Morris filed a motion to withdraw his guilty plea to the three counts of rape. In seeking to withdraw his plea, Morris claimed that his trial counsel misled him into signing the plea agreement and that his counsel did not fully explain the plea agreement to him. The next day, Morris filed an identical motion to withdraw his guilty plea. On October 16, 2017, Morris filed a petition for postconviction relief pursuant to R.C. 2953.21, asserting his conviction was void or voidable under the United States and Ohio Constitutions due to ineffective assistance of counsel.

{¶ 5} On July 2, 2018, the trial court denied Morris' petition for postconviction relief. The next day, the trial court denied his request to withdraw his guilty plea. He filed a timely notice of appeal. On October 22, 2018, this court dismissed Morris' appeal based on his failure to file a brief.

{¶ 6} In January 2019, Morris filed another motion to withdraw his guilty plea pursuant to Crim.R. 32.1, claiming that he was misled by his trial counsel, that he was under duress to enter the plea, and that he was taking medications affecting his state of mind. In February 2019, the trial court denied Morris' successive motion.

{¶ 7} Morris timely appeals.

II. Assignments of Error

{¶ 8} Morris assigns the following errors for our review:

[1.] Appellant was denied effective assistance of counsel guaranteed under the Sixth Amendment to the U.S. Constitution thus denying his right to a fair trial.

[2.] Appellant was denied effective assistance of counsel guaranteed under the Sixth Amendment to the U.S. Constitution thus denying his right to a fair trial.

[3.] The trial court erred by not granting defendant a hearing on his motion to withdraw plea.

[4.] Appellant was denied equal protection of law and due process guaranteed by the Fifth and Fourteenth Amendment of the U.S. Constitution.

III. Discussion

{¶ 9} Pursuant to App.R. 16(A)(3), an appellant's brief must contain "[a] statement of the assignments of error presented for review, with reference to the place in the record where each error is reflected." Appellate courts determine each appeal "on its merits on the assignments of error set forth in the briefs under App.R. 16." App.R. 12(A)(1)(b). Thus, an assignment of error must specify the alleged error on which an appellant relies to seek the reversal, vacation, or modification of an adverse judgment. *Traditions at Stygler Rd., Inc. v. Vargas-Smith*, 10th Dist. No. 15AP-69, 2015-Ohio-4684, ¶ 9.

{¶ 10} Morris' first and second assignments of error allege he was denied a fair trial because he received ineffective assistance of counsel. His third assignment of error alleges the trial court erred in denying his successive motion to withdraw his guilty plea without a hearing. Lastly, his fourth assignment of error simply alleges he was denied equal protection and due process. Because Morris appeals from the trial court's denial of his January 2019 successive motion to withdraw his guilty plea, we construe his four assignments of error to each generally allege the trial court erred in denying that motion.

{¶ 11} Pursuant to Crim.R. 32.1, 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." Thus, a "trial court may allow the post-sentence withdrawal of a plea of guilty only to correct a manifest injustice." *State v. Aleshire*, 5th Dist. No. 2011-CA-73, 2012-Ohio-16, ¶ 23. A defendant seeking to withdraw a guilty plea after the imposition of sentence carries the burden of establishing the existence of manifest injustice. *State v. Morgan*, 10th Dist. No. 12AP-241, 2012-Ohio-5773, ¶ 11. The term "'[m]anifest 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.'" *Id.* at ¶ 10, quoting *State v. Williams*, 10th Dist. No. 03AP-1214, 2004-Ohio-6123, ¶ 5.

{¶ 12} A motion made under Crim.R. 32.1 "is addressed to the sound discretion of the trial court," and therefore "appellate review of the trial court's denial of a post-sentence motion to withdraw a guilty plea is limited to the determination of whether the trial court abused its discretion." *Id.* at ¶ 11. An abuse of discretion connotes a decision that is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 13} Here, Morris' January 2019 motion to withdraw his guilty plea was barred by res judicata. It is well-established that res judicata bars claims raised in a Crim.R. 32.1 post-sentence motion to withdraw a guilty plea that were raised or could have been raised in a prior proceeding such as a direct appeal or a prior motion to withdraw a guilty plea. *State v. Rangel*, 11th Dist. No. 2018-L-102, 2019-Ohio-1845, ¶ 12; *State v. Madrigal*, 6th Dist. No. L-10-1142, 2011-Ohio-798, ¶ 16. Morris did not timely appeal from his judgment of conviction and sentence, and his request for leave to file a delayed appeal was denied. Then in October 2017, he moved to withdraw his guilty plea, and he petitioned for postconviction relief. Those requests were denied. He appealed the denial of those motions, but the appeal was dismissed because he did not file an appellate brief. In his January 2019 motion to withdraw his guilty plea, Morris asserted that his plea was not knowingly and intelligently entered because he was misled by his trial counsel, he was under duress to enter the plea, and he was taking medications affecting his state of mind. This motion raised issues that were, or could have been, raised in a direct appeal or by prior motion. Consequently, res judicata barred the motion. And because this motion was barred by res judicata, the trial court did not err in denying the motion without a hearing. *State v. Rock*, 11th Dist. No. 2018-L-021, 2018-Ohio-4175, ¶ 14.

{¶ 14} Accordingly, we overrule Morris' first, second, third, and fourth assignments of error.

IV. Disposition

{¶ 15} Having overruled all four of Morris' assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN and BRUNNER, JJ., concur.
