

**COURT OF APPEALS OF OHIO**  
**EIGHTH APPELLATE DISTRICT**  
**COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	Nos. 110090 and 110288
	:	
v.	:	
	:	
MATTHEW H. SAID,	:	
	:	
Defendant-Appellant.	:	

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JOURNAL ENTRY AND OPINION

**JUDGMENT: AFFIRMED**  
**RELEASED AND JOURNALIZED: September 23, 2021**

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Criminal Appeal from the Cuyahoga County Court of Common Pleas  
Case No. CR-18-629623-A

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***Appearances:***

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Frank Romeo Zeleznikar and Patrick Lavelle, Assistant Prosecuting Attorneys, *for appellee*.

Gregory T. Stralka, *for appellant*.

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Defendant-appellant Matthew Said brings this appeal challenging the trial court's judgment denying his motion to withdraw his guilty plea. Said argues that the trial court abused its discretion in denying the motion without proper review or a hearing. After a thorough review of the record and law, this court affirms.

## I. Factual and Procedural History

{¶ 2} The instant matter arose from Said's involvement in the transportation of cocaine between Chicago, Illinois and Cleveland, Ohio.

{¶ 3} On June 19, 2018, Said was charged in an eight-count indictment with (1) trafficking, a first-degree felony in violation of R.C. 2925.03(A)(1), (2) trafficking, a first-degree felony in violation of R.C. 2925.03(A)(2), (3) drug possession, a first-degree felony in violation of R.C. 2925.11(A), (4) drug trafficking, a first-degree felony in violation of R.C. 2925.03(A)(2), (5) drug possession, a first-degree felony in violation of R.C. 2925.11(A), (6) tampering with evidence, a third-degree felony in violation of R.C. 2921.12(A)(1), (7) resisting arrest, a second-degree misdemeanor in violation of R.C. 2921.33(A), and (8) possessing criminal tools, a fifth-degree felony in violation of R.C. 2923.24(A), with forfeiture specifications.<sup>1</sup>

{¶ 4} Counts 1, 2, and 4 contained language alleging that Said "previously had pleaded guilty to or been convicted of two or more drug offenses[.]"<sup>2</sup> Counts 4 and 5 contained major drug offender specifications pursuant to R.C. 2941.1410(A), and forfeiture specifications. Said pled not guilty to the indictment at his June 25, 2019 arraignment.

{¶ 5} The parties reached a plea agreement during pretrial proceedings. The state amended the amount of the cocaine with which Said was charged in Count 4

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<sup>1</sup> All of the drug-related offenses alleged that the drug involved in the violation "is a compound, mixture, preparation, or substance containing cocaine[.]"

<sup>2</sup> Said was convicted of drug possession in Cuyahoga C.P. No. CR-07-494237, and trafficking in Cuyahoga C.P. No. CR-12-567504.

from “equals or exceeds 100 grams” to “equals or exceeds 27 grams but is less than 100 grams.” The state also deleted the major drug offender specification underlying Count 4 and the language alleging that Said had two or more prior drug abuse convictions. The parties agreed to recommend a sentencing range with a minimum of five years and a maximum of ten years. (Tr. 3-4.)

{¶ 6} On December 17, 2019, Said pled guilty to Count 4 as amended, and tampering with evidence as charged in Count 6. The remaining counts and specifications were nolle. The trial court ordered a presentence investigation report and set the matter for sentencing.

{¶ 7} The trial court held a sentencing hearing on January 15, 2020. The trial court sentenced Said to a prison term of six years: six years on Count 4 (mandatory sentence) and one year on Count 6. The trial court ordered the counts to run concurrently with one another.

{¶ 8} On November 13, 2020, Said, acting pro se, filed a notice of appeal challenging the trial court’s January 15, 2020 judgment entry. 8th Dist. Cuyahoga No. 110090.

{¶ 9} On January 6, 2021, Said filed a pro se motion to withdraw his guilty plea. Therein, Said argued that the following manifest injustice occurred warranting withdrawal of his guilty plea:<sup>3</sup>

[Defense] counsel being extremely ineffective advocating for the state against [Said’s] interest, misleading [Said] into an [unconstitutional]

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<sup>3</sup> Said appeared to concede that his motion to withdraw was filed after the trial court imposed his sentence. Appellate counsel appears to argue, however, that Said’s motion to withdraw was filed before sentencing.

illegal sentence, misrepresentation of terms of plea by the state, trial court and defense counsel, force to make an unknowledgeable plea under duress of imprisonment and deprivation of Fourteenth Amendment rights to due process and equal protection under the law.

{¶ 10} On January 8, 2021, the state filed a brief in opposition to Said's motion to withdraw. Therein, the state argued that (1) the trial court did not have jurisdiction to rule on the motion to withdraw because Said's first appeal was pending, (2) Said failed to provide any evidence or an affidavit demonstrating a manifest injustice that warranted withdrawal of his plea, and (3) Said was not entitled to a hearing on his motion to withdraw because the facts alleged by Said failed to demonstrate that a manifest injustice occurred.

{¶ 11} The trial court denied Said's motion to withdraw on January 11, 2021. On February 10, 2021, Said filed an appeal challenging the trial court's denial of his motion to withdraw. 8th Dist. Cuyahoga No. 110288.

{¶ 12} On February 12, 2021, this court remanded the matter to the trial court to enter a valid ruling on Said's motion to withdraw. This court explained that because Said's first appeal was pending, the trial court did not have jurisdiction to rule on Said's motion to withdraw on January 11, 2021. This court also consolidated Said's two appeals. On February 19, 2021, the trial court denied Said's motion to withdraw.

{¶ 13} In this appeal, Said assigns one error for review:

I. The trial court abused its discretion when it failed to have a hearing or properly review the Appellant's motion seeking to withdraw his guilty plea.

## II. Law and Analysis

{¶ 14} In his sole assignment of error, Said argues that the trial court abused its discretion in denying his motion to withdraw his guilty plea because the trial court failed to properly review the motion and denied the motion without holding a hearing.

{¶ 15} “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. The defendant bears the burden of establishing the existence of “manifest injustice.” *State v. Smith*, 49 Ohio St.2d 261, 361 N.E.2d 1324 (1977), paragraph one of the syllabus.

{¶ 16} “Manifest injustice” is defined as a “fundamental flaw in the path of justice so extraordinary that the defendant could not have sought redress from the resulting prejudice through another form of application reasonably available to him or her. It has also been defined as ‘a clear or openly unjust act,’ which exists only in extraordinary cases.” *State v. Cottrell*, 8th Dist. Cuyahoga No. 95053, 2010-Ohio-5254, ¶ 15, citing *State v. Blatnik*, 17 Ohio App.3d 201, 202, 478 N.E.2d 1016 (6th Dist.1984).

A claim of manifest injustice must be supported by specific facts in the record or through affidavits submitted with the motion. *See, e.g., State v. Darling*, 8th Dist. Cuyahoga No. 109439, 2021-Ohio-440, ¶ 12; *State v. Geraci*, 8th Dist. Cuyahoga Nos. 101946 and 101947, 2015-Ohio-2699, ¶ 10. Postsentence withdrawal of a guilty plea is permitted “only in extraordinary cases.” [*State v. McElroy*, 8th Dist. Cuyahoga Nos.

104639, 104640 and 104641, 2017-Ohio-1049, ¶ 30], quoting *State v. Rodriguez*, 8th Dist. Cuyahoga No. 103640, 2016-Ohio-5239, ¶ 22.

*State v. Houk*, 8th Dist. Cuyahoga No. 110115, 2021-Ohio-2107, ¶ 15.

{¶ 17} “A trial court is not required to hold a hearing on every postsentence motion to withdraw a guilty plea”; a hearing is only required “if the facts alleged by the defendant, accepted as true, would require that the defendant be allowed to withdraw the plea.” *State v. D-Bey*, 8th Dist. Cuyahoga No. 109000, 2021-Ohio-60, ¶ 57, citing *State v. Norman*, 8th Dist. Cuyahoga No. 105218, 2018-Ohio-2929, ¶ 16, and *State v. Vihtelic*, 8th Dist. Cuyahoga No. 105381, 2017-Ohio-5818, ¶ 11.

{¶ 18} This court reviews the denial of a postsentence motion to withdraw a guilty plea for an abuse of discretion. *State v. Straley*, 159 Ohio St.3d 82, 2019-Ohio-5206, 147 N.E.3d 623, ¶ 15, citing *Smith*, 49 Ohio St.2d 261, 361 N.E.2d 1324, at paragraph two of the syllabus, and *State v. Francis*, 104 Ohio St.3d 490, 2004-Ohio-6894, 820 N.E.2d 355, ¶ 32. We also review a trial court’s decision whether to hold a hearing on a postsentence motion to withdraw a guilty plea for an abuse of discretion. *See, e.g., State v. Grant*, 8th Dist. Cuyahoga No. 107499, 2019-Ohio-796, ¶ 13. An abuse of discretion occurs where a trial court’s decision is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 19} As an initial matter, we note that Said appears to argue in his appellate brief that his motion to withdraw was filed before sentencing, such that the general rule that presentence motions to withdraw a guilty plea “should be freely and

liberally granted” applies. *See State v. Xie*, 62 Ohio St.3d 521, 527, 584 N.E.2d 715 (1992). Said claims that he “notified the trial court in writing three days after the plea hearing that in addition [sic] to discharging trial counsel, he also wanted to withdraw his guilty plea.” Appellant’s brief at 4.

{¶ 20} Said’s claim that he sought to withdraw his plea before sentencing is unsupported by the record. There was no motion or correspondence docketed in between the change-of-plea hearing on December 17, 2019, and the sentencing hearing on January 15, 2020. As noted above, Said implicitly acknowledged in his pro se motion to withdraw that the standard for postsentence motions applied. Nor was there any mention on the record at sentencing of a letter Said sent to the trial court seeking to withdraw his guilty plea.

{¶ 21} Because Said’s motion to withdraw was filed after sentencing, his reliance on the factors set forth in *State v. Tull*, 168 Ohio App.3d 54, 2006-Ohio-3365, 858 N.E.2d 828, ¶ 8 (2d Dist.), and *Cleveland v. Mayfield*, 8th Dist. Cuyahoga No. 100494, 2014-Ohio-3712, ¶ 13, is misplaced. *Tull* and *Mayfield* involved presentence motions to withdraw pleas.

{¶ 22} In the instant matter, as noted above, Said appeared to argue in his motion that withdrawal of his guilty plea was necessary to correct a manifest injustice because (1) he was denied the effective assistance of trial counsel, (2) his guilty plea was not knowingly and intelligently made, and (3) that he pled guilty under duress.

{¶ 23} First, regarding his ineffective assistance claim, Said alleged that defense counsel did not advocate on his behalf and misled him about the terms of the plea agreement and sentence.

{¶ 24} In order to establish ineffective assistance of counsel, a defendant must demonstrate: (1) deficient performance by counsel, i.e., that counsel's performance fell below an objective standard of reasonable representation, and (2) that counsel's errors prejudiced the defendant, i.e., a reasonable probability that but for counsel's errors, the outcome would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-688, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989), paragraphs two and three of the syllabus.

{¶ 25} Ineffective assistance of counsel can, under certain circumstances, constitute a manifest injustice warranting a withdrawal of a guilty plea. *Houk*, 8th Dist. Cuyahoga No. 110115, 2021-Ohio-2107, at ¶ 18, citing *State v. Montgomery*, 8th Dist. Cuyahoga No. 103398, 2016-Ohio-2943, ¶ 4.

{¶ 26} In the instant matter, Said has failed to demonstrate that counsel's performance was deficient, much less that counsel's ineffective assistance constituted a manifest injustice warranting withdrawal of his plea or a hearing on his motion to withdraw. Aside from his conclusory and self-serving allegation that he was misled by defense counsel, Said failed to specify *how* defense counsel misled him regarding the terms of the plea agreement or the potential sentence. Said failed to point to specific facts in the record supporting his allegation that defense counsel



misled him. Finally, Said failed to submit an affidavit supporting his claim that he was misled by defense counsel or that defense counsel's performance was deficient in any way.

**{¶ 27}** Defense counsel confirmed at the change-of-plea hearing that he reviewed the state's evidence, possible defenses, and the evidence favorable to the defense with Said. (Tr. 9.) Furthermore, the record reflects that defense counsel negotiated a plea agreement that significantly reduced Said's prison exposure. Said confirmed that he was satisfied with the representation provided by defense counsel during the change-of-plea hearing. (Tr. 14.)

**{¶ 28}** Second, regarding his claim that his plea was not knowingly or intelligently entered, Said failed to support this claim with any specific facts in the record or an affidavit. Said's claim is also unsupported by the record.

**{¶ 29}** Said confirmed during the change-of-plea hearing that he "read through the charges, the discovery, and discussed the various aspects of this case with [his] attorney[.]" (Tr. 11.) Said confirmed that he understood the charges to which he would be pleading guilty. Said confirmed, on multiple occasions, that he understood he would be going to prison if he pled guilty.

**{¶ 30}** Third, regarding his claim that he was forced or coerced into pleading guilty, Said failed to support this claim with any specific facts in the record or an affidavit. Said's claim is also unsupported by the record.

**{¶ 31}** The trial court confirmed during the change-of-plea hearing that Said wanted to take advantage of the plea agreement negotiated between defense counsel

and the state and that it was Said's intention to enter a guilty plea. As noted above, Said confirmed that he was satisfied with the representation provided by defense counsel. Said also confirmed that no threats or promises had been made to him that induced him into pleading guilty. (Tr. 20.) Said's conclusory and self-serving allegation that his guilty plea was entered under duress is insufficient to rebut the evidence in the record indicating that Said voluntarily pled guilty. *See State v. Kapper*, 5 Ohio St.3d 36, 38, 448 N.E.2d 823 (1983) (“[d]efendant’s own self-serving declarations or affidavits alleging a coerced guilty plea are insufficient to rebut the record on review which shows that his plea was voluntary.”).

**{¶ 32}** During the sentencing hearing, Said had an opportunity to address the trial court. He did not request to withdraw his guilty plea at that time. Rather, Said took full responsibility for his actions.

**{¶ 33}** Crim.R. 32.1 does not provide an express time limit for moving to withdraw a plea after a sentence is imposed. However, “an undue delay between the occurrence of the alleged cause for withdrawal and the filing of the motion is a factor adversely affecting the credibility of the movant and militating against the granting of the motion.” *Straley*, 159 Ohio St.3d 82, 2019-Ohio-5206, 147 N.E.3d 623, at ¶ 15, quoting *State v. Smith*, 49 Ohio St.2d at 264, 361 N.E.2d 1324, and *Oksanen v. United States*, 362 F.2d 74, 79 (8th Cir.1966).

**{¶ 34}** The record reflects that Said filed his motion to withdraw nearly ten months after he was sentenced, and Said has failed to present any explanation justifying the delay in filing the motion to withdraw. *See State v. Morgan*, 10th Dist.

Franklin No. 12AP-241, 2012-Ohio-5773, ¶ 13 (ten-month delay deemed unreasonable in light of defendant's failure to present a reason in support of the delay). Accordingly, Said's credibility as it relates to his self-serving allegations regarding ineffective assistance of counsel, being misled by counsel, and pleading guilty under duress are suspect. *See State v. Crespo*, 8th Dist. Cuyahoga Nos. 109617 and 109741, 2021-Ohio-848, ¶ 14, citing *Straley*.

{¶ 35} We find no merit to Said's argument that the trial court erred or abused its discretion in denying his motion without explanation. Crim.R. 32.1 does not require a trial court to issue findings of fact and conclusions of law in denying a motion to withdraw a plea. *See State v. Mitchell*, 8th Dist. Cuyahoga No. 109178, 2020-Ohio-3069, ¶ 15; *State v. Skipworth*, 8th Dist. Cuyahoga No. 103701, 2016-Ohio-3069, ¶ 15; *State v. Linder*, 8th Dist. Cuyahoga No. 99350, 2013-Ohio-5018, ¶ 9.

{¶ 36} For all of the foregoing reasons, we find no basis upon which to conclude that the trial court's judgment denying Said's motion to withdraw his guilty plea was arbitrary, unreasonable, or unconscionable. Said failed to demonstrate, through specific facts in the record or a supporting affidavit, that a manifest injustice occurred warranting withdrawal of his guilty plea. Said's claims that he was denied the effective assistance of counsel, misled by counsel, and forced to plead guilty are unsubstantiated. Accordingly, the trial court did not abuse its discretion in denying Said's motion to withdraw.

**{¶ 37}** Furthermore, because Said did not identify or set forth specific facts in his motion, or submit a supporting affidavit, he failed to set forth facts that, if true, would have demonstrated a manifest injustice and required the trial court to grant his motion to withdraw. Accordingly, the trial court did not abuse its discretion in denying Said's motion without an evidentiary hearing. *See Houk*, 8th Dist. Cuyahoga No. 110115, 2021-Ohio-2107, at ¶ 38, citing *State v. Ritchie*, 8th Dist. Cuyahoga No. 109493, 2021-Ohio-1298, ¶ 17, 24, and *Vihtelic*, 8th Dist. Cuyahoga No. 105381, 2017-Ohio-5818, at ¶ 11.

**{¶ 38}** Said's sole assignment of error is overruled.

**{¶ 39}** Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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FRANK D. CELEBREZZE, JR., JUDGE

SEAN C. GALLAGHER, P.J., and  
EILEEN T. GALLAGHER, J., CONCUR