

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY, OHIO**

STATE OF OHIO,	:	OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2009-A-0038
RALPH E. CLARK,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Ashtabula County Court of Common Pleas, Case No. 05 CR 118.

Judgment: Affirmed

Thomas L. Sartini, Ashtabula County Prosecutor, and *Shelley M. Pratt*, Assistant Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047 (For Plaintiff-Appellee).

Virginia K. Miller, Smith & Miller, 36 West Jefferson Street, #1, Jefferson, OH 44047 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, Ralph E. Clark, appeals the Judgment of the Ashtabula County Court of Common Pleas, denying his Motion to Withdraw Plea Pre-sentence. For the following reasons, we affirm the decision of the court below.

{¶2} In May 2005, Clark was indicted for beating his wife to death with a rifle.

{¶3} In January 2006, Clark signed a negotiated Plea of Guilty to Aggravated Murder with a Three Year Gun Specification, and was sentenced to life imprisonment with eligibility for parole after twenty-eight years.

{¶4} Clark appealed his conviction and sentence to this court, which affirmed Clark's guilty plea but reversed the imposition of economic sanctions. See *State v. Clark*, 11th Dist. No. 2006-A-0004, 2007-Ohio-1780.

{¶5} Clark appealed this court's decision to the Ohio Supreme Court, which remanded the case to our court for determination of whether Clark was prejudiced by the misinformation provided to him regarding his sentence, i.e. whether he would not have entered his plea but for the trial judge's erroneous explanation of parole/post-release control. See *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748.

{¶6} On remand, this court affirmed Clark's guilty plea but remanded the case to the trial court for further proceedings with respect to the financial sanctions imposed. See *State v. Clark*, 11th Dist. No. 2006-A-0004, 2008-Ohio-6768, at ¶24.

{¶7} On June 17, 2009, Clark filed a Motion to Withdraw Plea Pre-sentence. As grounds for the Motion, Clark argued "he does not believe that the State of Ohio can prove his guilt at trial." Clark also asserted that the standard for withdrawing a guilty plea pre-sentence be applied when ruling on his Motion.

{¶8} On July 2, 2009, Clark's resentencing hearing was held. At the hearing, Clark raised additional arguments as to why his plea was not knowingly, voluntarily, or intelligently made. Clark claimed he was under the influence and control of a religious cult when he entered the plea. According to Clark, a day or two before the plea was entered, he was visited in the jail by a Bishop Keyes, his cousin and church leader.

Ashtabula County Prosecutor, Thomas L. Sartini, was alleged to have asked Keyes to pressure Clark to accept the plea deal offered by the State. But for Keyes' intervention on behalf of the Prosecutor, Clark asserted that he would not have accepted the plea agreement.

{¶9} Clark also claimed that his post-traumatic stress and being “somewhat illiterate” contributed to his inability to fully understand the terms of the plea agreement.

{¶10} On July 9, 2009, the trial court entered its Judgment Entry denying Clark's Motion. The court ruled that Clark's Motion would be treated as a post-sentence motion to withdraw a guilty plea, inasmuch as his plea and conviction were neither reversed nor found void by this court or the Ohio Supreme Court. Addressing the merits of Clark's motion, the court held that the allegations do not rise to the level of a manifest injustice. The court noted that the only evidence presented was Clark's own “self-serving” allegations; the validity of Clark's plea has been affirmed on appeal; and many of the allegations made are barred by res judicata, inasmuch as they could have been raised in his direct appeal.

{¶11} On August 5, 2009, Clark filed his Notice of Appeal. On appeal, he raises the following assignment of error:

{¶12} “[1.] The court erred when it denied Clark's motion to withdraw his plea where the prosecuting attorney conducted plea negotiations with him through a third party - without his attorney's knowledge.”

{¶13} “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 phrase “manifest injustice” has been “variously defined,” however, “it is clear that under such standard, a postsentence withdrawal motion is allowable only in extraordinary cases.” *State v. Smith* (1977), 49 Ohio St.2d 261, 264 (citation omitted); *Conneaut v. Donofrio*, 11th Dist. No. 2008-A-0072, 2009-Ohio-2947, at ¶11 (citation omitted); *State v. Goist*, 11th Dist. No. 2003-T-0135, 2004-Ohio-3926, at ¶5 (citation omitted). The reason for such a high standard for granting a post-sentence motion to withdraw a guilty plea “is to discourage a defendant from pleading guilty to test the weight of potential reprisal, and later withdraw the plea if the sentence was unexpectedly severe.” *State v. Caraballo* (1985), 17 Ohio St.3d 66, 67 (citation omitted).

{¶14} “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.” *Smith*, 49 Ohio St.2d 261, at paragraph one of the syllabus. “A motion made pursuant to Crim.R. 32.1 is addressed to the sound discretion of the trial court, and the good faith, credibility and weight of the movant’s assertions in support of the motion are matters to be resolved by that court.” *Id.* at paragraph two of the syllabus.

{¶15} Clark argues the facts and circumstances of his case, i.e. the Prosecutor’s conduct in “sending Clark’s cousin, Bishop Keyes, to meet with him in jail to try to convince him to take the State’s plea offer,” “are so compelling that they rise to the level of manifest injustice.” We disagree.

{¶16} Clark’s allegations are of doubtful credibility and the trial court acted within its discretion by rejecting them. The only evidence that the Prosecutor used Bishop Keyes to pressure Clark into accepting the plea offer is Clark’s own statements. *State*

v. Mull, 11th Dist. No. 2008-L-128, 2009-Ohio-3654, at ¶45 (“[g]enerally, a self-serving affidavit or statement is insufficient to demonstrate manifest injustice”) (citation omitted). Clark did not raise the argument in his written Motion, but at the resentencing hearing, thereby depriving the Prosecutor of the opportunity of preparing a response to the novel argument.

{¶17} Moreover, Clark raised the argument three and a half years after entering his plea. “[A]n undue delay between the occurrence of the alleged cause for withdrawal of a guilty plea and the filing of a motion under Crim.R. 32.1 is a factor adversely affecting the credibility of the movant and militating against the granting of the motion.” *Smith*, 49 Ohio St.2d 261, at paragraph three of the syllabus. According to Clark, Bishop Keyes told him that the Prosecutor had sent him “to try and get [Clark] to take the deal.” Clark offers no explanation for the delay in moving to withdraw his plea.

{¶18} We further note that, during the plea colloquy, Clark represented to the trial court that his decision to enter a guilty plea was an “informed decision,” made in consultation with his attorney, he was not being forced or compelled to enter the plea, and he understood the terms of the plea. The evidence of the plea colloquy undermines Clark’s current allegations of coercion by Bishop Keyes on behalf of the Prosecutor. *State v. Kapper* (1983), 5 Ohio St.3d 36, 38 (“[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”).

{¶19} Clark relies on the case of *Disciplinary Counsel v. Sartini*, 114 Ohio St.3d 205, 2007-Ohio-3601, as evidence to support his allegations. In this case, Prosecutor Sartini was publicly reprimanded by the Ohio Supreme Court for conducting plea

negotiations through an offender's mother, without the knowledge of the offender's attorney. Id. at ¶17. The facts of that case, however, are not analogous to Clark's allegations. In *Sartini*, the terms of the plea itself were negotiated through the offender's mother, who served as a liaison between the Prosecutor and the offender. Id. at ¶¶9-12. In the present case, Bishop Keyes was allegedly sent once to urge Clark to take the plea already offered. Contrary to Clark's argument, the facts and circumstances in *Sartini* are unique to that case and do not suggest that it was the Prosecutor's regular practice to employ the family members of offenders to secure plea agreements. Id. at ¶19 ("the misconduct had 'occurred solely out of compassion for Rhonda Hatfield, whose maternal distress caused [respondents'] distress, which in turn, caused them to abandon their heads for their hearts'").

{¶20} The sole assignment of error is without merit.

{¶21} For the foregoing reasons, the Judgment of the Ashtabula County Court of Common Pleas, denying Clark's Motion to Withdraw Plea Pre-sentence, is affirmed. Costs to be taxed against appellant.

MARY JANE TRAPP, P.J.,

TIMOTHY P. CANNON, J.,

concur.