[Cite as *State v. Webster*, 2011-Ohio-6514.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

PORTAGE COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	
- vs -	:	**CASE NOS. 2010-P-0087, 2010-P-0088, and 2010-P-0089**
PAUL T. WEBSTER IV,	:	
Defendant-Appellant.	:	

Criminal Appeals from the Portage County Municipal Court, Kent Division, Case Nos. 2005 CRB 0581 K, 2005 CRB 0582 K, and 2005 CRB 1820 K.

Judgment: Affirmed.

Victor V. Vigluicci, Portage County Prosecutor, and *Kimberly Quinn*, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266; and *James R. Silver*, City of Kent Law Director, 215 East Summit Street, Kent, OH 44240 (For Plaintiff-Appellee).

Paul T. Webster IV, pro se, 8408 Lucerne Drive, Chagrin Falls, OH 44023 (Defendant-Appellant).

THOMAS R. WRIGHT, J.

{¶1} Each of the instant appeals is based upon a final judgment of the Portage County Municipal Court, as rendered in three separate criminal actions. Appellant, Paul T. Webster IV, seeks reversal of the trial court's denial of his post-conviction motion to withdraw his prior "no contest" plea on the grounds of a manifest injustice. In essence, he submits that the trial court erred in overruling his request without fully considering the

materials he attached to his submission.

{¶2} In April and September 2005, appellant was arrested on two occasions by officers of the Kent City Police Department. These arrests resulted in the filing of three distinct proceedings against him in the municipal court. In the first action, 2005 CRB 0581K, appellant was charged with misdemeanor counts of resisting arrest, disorderly conduct, and possession of drug paraphernalia. In the second, 2005 CRB 0582 K, he was charged with one misdemeanor count of obstructing official business. In the third, 2005 CRB 1820 K, he was cited for misdemeanor counts of resisting arrest, obstructing official business, disorderly conduct, criminal damaging, and possession of marijuana.

{¶3} All three actions were scheduled for trial in December 2005. Before the matter could proceed, though, appellant and the prosecution were able to reach a plea bargain, under which he agreed to plead no contest to the two counts of resisting arrest. The remaining charges under all three cases were then dismissed. Upon accepting the new plea, the trial court found him guilty of both offenses and merged them for purposes of sentencing. Ultimately, appellant was sentenced to 180 days in jail and fined the sum of $1,000, but these penalties were basically suspended on the condition that he obtain psychological counseling.

{¶4} Approximately four years after the entry of the conviction, appellant began to file a series of motions regarding the validity of the prior proceedings. This series of new submissions culminated in October 2010 with the filing of his motion to “correct” a manifest injustice. In this motion, appellant basically requested that he be permitted to withdraw his plea of no contest because, over the past three years, he had discovered new evidence pertaining to the substance of the three cases. He maintained that this

new evidence was exculpatory in nature, and that if he had been aware of this evidence in December 2005, he never would have agreed to the plea bargain.

{¶5} In support of his motion, appellant attached copies of certain documents which he had obtained from the Kent City Police Department. The documents primarily consisted of reports that the police officers had completed regarding the amount of force employed to subdue him. Although not attached to the motion, appellant also referred to his procurement of videotapes of his two underlying arrests. According to appellant, a review of at least one of the videotapes had shown that it had been altered to delete certain footage of the manner in which he had been treated by the police.

{¶6} The state did not submit a written response to the motion to correct. Thirty days after the filing of the motion, the trial court conducted an oral hearing at which only appellant was present. During this proceeding, appellant did not submit any additional evidence in support of his motion, but was afforded an opportunity to argue the merits of his motion. Appellant also answered the trial court's question regarding the events that took place when a prior judge had accepted his "no contest" plea in December 2005.

{¶7} Three days following the oral hearing, the trial court rendered its judgment denying appellant's motion to correct the manifest injustice. As to the videotapes cited by appellant, the court concluded that he could not go forward on that point because he had not submitted any expert statements stating that the tapes had been altered in any respect. The trial court further held that the limited materials before it demonstrated that appellant's plea had been made knowingly, intelligently and voluntarily.

{¶8} In appealing from the identical judgment on each of the three underlying actions, appellant has assigned the following as error:

{¶9} "[1.] The trial court erred when it denied the defendant's Crim.R. 32.1 motion to withdraw his guilty plea without first conducting a hearing.

{¶10} "[2.] The court erred in not finding the state violated its duty to disclose existence of material evidence favorable to the defense which remained hidden in police files and the existence was not disclosed to defense.

{¶11} "[3.] The court [erred] in finding Appellant's former defense effective.

{¶12} "[4.] The trial court erred in not finding that evidence has not been produced of audio/video modification.

{¶13} "[5.] Docket entry on December 7th does not match that of oral order in December 6th, 2005 pre-trial hearing."

{¶14} Since the basic subject matter of appellant's first and fourth assignments is related, they will be addressed together. Under his fourth assignment, appellant maintains that the trial court's finding of a lack of any expert testimony as to his "video" argument was incorrect because he attached the letter/affidavit of a "forensic tape" expert to his motion. Under his first assignment, appellant contends that, since he did submit some expert materials with his motion, he was entitled to a full evidentiary hearing.

{¶15} As an initial point, this court would again indicate that the record before us shows that the trial court did conduct an oral hearing prior to rendering its final ruling. Moreover, the transcript of that hearing demonstrates that appellant was afforded a full opportunity to speak in support of his motion. However, as part of his statements to the trial court, appellant asserted that, once the court made a preliminary determination as to the merits of his motion, he would have "evidence" to present. In responding to this

statement, the trial court never told appellant that if he had anything else to submit, he was required to do so at that time. Accordingly, this court will address the question of whether the trial court was obligated to conduct a separate "evidentiary" hearing.

{¶16} Even though not expressly stated in his filing at the trial level, appellant's motion to "correct" was technically brought under Crim.R. 32.1, which allows a criminal defendant to move to withdraw a dispositive plea under certain circumstances. As to a Crim.R. 32.1 motion which is filed after the issuance of the final sentencing judgment, this court has held that a trial court can dispose of such a motion without an evidentiary hearing if the trial record conclusively contradicts the assertions made in support of the motion. *State v. Madeline* (Mar. 22, 2002), 11th Dist. No. 2000-T-0156, 2002 Ohio App. LEXIS 1348, at *17. In applying this principle, we have further held that a defendant's self-serving statements are not sufficient to overcome the initial burden of showing a manifest injustice. *State v. Balch*, 11th Dist. No. 2009-P-0074, 2010-Ohio-3361, at ¶24.

{¶17} In the instant case, appellant's request to withdraw his "no contest" plea was based upon his contention that he had obtained new videotapes of his arrests that he did not see prior to accepting the plea bargain. As part of the motion, he stated that the tapes in question had been altered to exclude certain materials, and that if he had been aware of these separate tapes in December 2005, he would have wanted to go to trial. In support of his assertion, appellant submitted a copy of a letter he had received from Steve Cain, the president of Forensic Tape Analysis.

{¶18} In this letter to appellant, Cain first indicated that he had reviewed a single tape which appellant had submitted for his consideration. Cain then stated that the tape in question appeared to have certain problems which might call into question whether it

had been altered. However, at the conclusion of the letter, Cain opined that he could not reach a final decision at that time:

{¶19} "In conclusion, the provided two DVD contained anomalies (i.e. suspicious record events) in both the audio and video channels. Not only were portions of the audio information missing, but there was distinct evidence of over-recording of some of the video data, especially that occurring at the end DVD Disk 2. As suggested earlier it is essential that attempts be made to obtain the original recording equipment and disks (tapes) to provide definitive answers the apparent editing that occurred on these DVDs."

{¶20} The record before this court does not indicate that appellant was ever able to give Cain the additional materials which were necessary for him to provide a final "definitive" answer. Thus, the Cain letter/affidavit does not constitute final evidence that the videos/disks were altered in such a manner as to remove tape of an alleged beating by the officers in the two arrests. In turn, because a defendant's own statements are not considered sufficient to raise a factual issue warranting an evidentiary hearing, the materials attached to appellant's motion did not suffice to create a factual dispute as to the videotapes in question.

{¶21} In addition to the Cain letter, appellant also submitted copies of certain documents that he had obtained from the Kent City Police Department. Our review of those documents indicates that they primarily consisted of reports that pertained to the level of force the arresting officers had to employ in attempting to subdue appellant. As to the reports, our review further shows that the majority of the reports relate to incidents in the city jail which occurred following his arrest; as a result, those reports did not pertain to the propriety of the basic arrests. More importantly, in regard to those

reports which do relate to the arrests, the documents do not contain any "evidence" that would be exculpatory in nature.

{¶22} In predicating its decision upon the conclusion that appellant had failed to submit any expert "testimony" with his motion, the trial court clearly failed to review the copy of the Cain letter/affidavit. However, given our own conclusion that the letter and the other evidentiary materials did not have any final conclusions which were beneficial to appellant, the trial court's ruling was not prejudicial, in that appellant's materials were not legally sufficient to warrant a separate evidentiary hearing on the matter. For this reason, appellant's first and fourth assignments are without merit.

{¶23} Our disposition of appellant's second and third assignments is controlled by the foregoing analysis. Under his second assignment, appellant asserts that the trial court erred in not concluding that, in December 2005, the state violated its duty to provide discovery of all exculpatory evidence. Under his third, he maintains that he was denied effective assistance of counsel because his original trial counsel failed to obtain copies of the disputed videos and reports. However, since we have concluded that the disputed materials were not exculpatory in nature, such findings by the trial court were not warranted. Accordingly, the second and third assignments are also without merit.

{¶24} Under his final assignment, appellant maintains that the trial court's final judgment of December 7, 2005, must be modified because the orders set forth in the entry are not consistent with the oral statements made by the judge at the prior oral hearing. As to this point, this court would merely note that each of the instant appeals was taken from the trial court's judgment of November 8, 2010. Therefore, this court does not have the authority to review the substance of the December 7, 2005 judgment

because the scope of our present jurisdiction is limited to the exact appealed judgment which is before us at this time. In this respect, appellant's fifth assignment does not raise an issue which can be addressed in the context of these appeals, and is therefore overruled.

{¶25} For the foregoing reasons, appellant's assignments of error are not well-taken. The judgment of the Portage County Municipal Court, Kent Division, is affirmed.

TIMOTHY P. CANNON, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.