

COURT OF APPEALS
COSHOCTON COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff - Appellee	:	Hon. John W. Wise, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	
JONATHAN LAHNA	:	Case No. 2017CA0006
	:	
Defendant - Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING:	Appeal from the Coshocton County Court of Common Pleas, Case No. 16 CR 0024
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JUDGMENT:	Affirmed
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DATE OF JUDGMENT:	September 20, 2017
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APPEARANCES:

For Plaintiff-Appellee

JASON W. GIVEN
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For Defendant-Appellant

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Baldwin, J.

{¶1} Defendant-appellant Jonathan Lahna appeals from the May 4, 2017 Judgment Entry of the Coshocton County Court of Common Pleas dismissing his Petition for Post-Conviction Relief. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On March 21, 2016, the Coshocton County Grand Jury indicted appellant on one count of aggravated burglary in violation of R.C. 2911.11(A)(2), a felony of the first degree, and one count of tampering with evidence in violation of R.C. 2921.12(A)(1), a felony of the third degree. The aggravated burglary charge was accompanied by a firearm specification. At his arraignment on March 28, 2016, appellant entered a plea of not guilty to the charges.

{¶3} Thereafter, on June 6, 2016, appellant withdrew his former not guilty plea and entered a plea of guilty to both counts and the specification. As memorialized in a Judgment Entry filed on August 1, 2016, appellant was sentenced to three years for aggravated burglary, three years for the specification, and three years for tampering with evidence. The trial court ordered that the sentences be served consecutively for an aggregate prison sentence of seven years. Appellant did not file a direct appeal.

{¶4} Appellant, on April 13, 2017, filed a Petition for Post-Conviction Relief. Appellant, in his Petition, argued that he was improperly indicted, found guilty of and sentenced under a firearm specification pursuant to R.C. 2941.145. Appellant specifically asserted that the trial court could not “impose multiple sentences of punishment for the same conduct of possessing and/or brandishing the single firearm that was at the burglary that therefore became an aggravated burglary” and that his double jeopardy rights were

violated. He further argued that he could not be convicted of a firearm specification because he did not possess, display or brandish the firearm during the commission of the aggravated burglary. Appellee filed a response to appellant's Petition on April 19, 2017 and appellant filed a reply on April 27, 2017.

{15} Pursuant to a Judgment Entry filed on May 4, 2017, the trial court found that appellant's arguments lacked merit and dismissed appellant's Petition for Post-Conviction Relief without a hearing.

{16} Appellant now raises the following assignment of error on appeal:

{17} THE TRIAL COURT DENIED THIS DEFENDANT A MEANINGFUL REVIEW, AND VIOLATED HIS DUE PROCESS AND CONSTITUTIONAL RIGHTS WHEN IT DISMISSED HIS TIMELY FILED POSTCONVICTION PETITION FOR RELIEF WITHOUT APPOINTING COUNSEL AND WITHOUT A HEARING, AND THEREBY DENIED HIM RELIEF FROM THE UNLAWFUL CONVICTION AND SENTENCE OF BEING AN ACCOMPLICE, AND GUILTY OF A NON-CRIMINAL OFFENSE STATUTE UNDER COMPLICITY TO A FIREARM (SIC) SPECIFICATION THAT THE COURTS THEMSELVES ADMIT IS A "PENALTY ENHANCEMENT PROVISION".

I

{18} Appellant, in his sole assignment of error, argues that the trial court erred when it dismissed his Petition for Post-Conviction Relief without a hearing and without appointing counsel. We disagree.

{19} A petition for post-conviction relief does not provide a petitioner a second opportunity to litigate his or her conviction, nor is the petitioner automatically entitled to an evidentiary hearing on the petition. *State v. Wilhelm*, 5th Dist. Knox No. 05-CA-31,

2006–Ohio–2450, ¶ 10, citing *State v. Jackson*, 64 Ohio St.2d 107, 110, 413 N.E.2d 819 (1980). In reviewing a trial court's denial of an appellant's petition for post-conviction relief, absent a showing of abuse of discretion, we will not overrule the trial court's finding if it is supported by competent and credible evidence. *State v. Delgado*, 8th Dist. Cuyahoga No. 72288, 1998 WL 241988, citing *State v. Mitchell*, 53 Ohio App.3d 117, 559 N.E.2d 1370 (8th Dist. 1988). When a defendant files a post-conviction petition pursuant to R.C. 2953.21, the trial court must grant an evidentiary hearing unless it determines that “the files and records of the case show the petitioner is not entitled to relief.” See R.C. 2953.21(F). We apply an abuse of discretion standard when reviewing a trial court's decision to deny a post-conviction petition without a hearing. *State v. Holland*, 5th Dist. Licking No. 12–CA–56, 2013–Ohio–905, ¶ 17. An abuse of discretion connotes more than an error of law or judgment, it implies the court's attitude is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E. 2d 1140 (1983).

{¶10} Appellant asserts that the trial court subjected him to double jeopardy and violated his right to due process by convicting him of both aggravated burglary with a deadly weapon under R.C. 2911.11, and a firearm specification for this count.

{¶11} In *Missouri v. Hunter*, 459 U.S. 359, 366, 103 S.Ct. 673, 74 L.Ed.2d 535 (1983), the Supreme Court of the United States held that the double jeopardy clause was not violated where the defendant was convicted of both a charge of “armed criminal action,” a sentence enhancement, and a charge of first-degree robbery, the underlying felony, where the legislature specifically authorizes cumulative punishment under two statutes. Similarly, in *State v. Vasquez*, 18 Ohio App.3d 92, 94, 481 N.E.2d 640 (6th

Dist. 1984), the court held that the double jeopardy clause does not preclude the imposition, in a single trial, of cumulative punishment for aggravated robbery and a firearm specification. Accord *State v. Mosley*, 166 Ohio App.3d 71, 2006-Ohio-1756, 849 N.E.2d 73 (5th Dist). In *Mosley*, this Court held that “[t]he terms of R.C. 2941.145 manifest the General Assembly’s intent to create a penalty for conviction of a firearm specification additional to that provided for an applicable underlying felony,..” *Id* at paragraph 26. Appellant’s double jeopardy rights were, therefore, not violated.

{¶12} Appellant further appears to challenge his indictment. The indictment in this case stated that appellant, in committing the aggravated burglary, had a deadly weapon or dangerous ordnance on or about his person or under his control. The specification to the indictment further stated that appellant “had a firearm...on or about his person or under his control while committing the offense and displayed the firearm, brandished the firearm, indicated that he possessed the forearm, or used it to facilitate the offense.” Appellant pleaded guilty to the indictment and did not file a direct appeal. Any challenge to the sufficiency of an indictment may be raised only by direct appeal. Crim R 12(C); *State v. Jackson*, 5th Dist. Knox No. 94–CA–26, 1995 WL 497632 (Aug. 4, 1995), citing *State, ex rel. Hadlock v. McMackin*, 61 Ohio St.3d 433, 434, 575 N.E.2d 184(1991).

{¶13} Moreover, a plea of guilty constitutes a complete admission of guilt, and by entering a plea of guilty, the accused is not simply stating that he did the acts described in the indictment; he is admitting guilt of a substantive crime. *State v. Barnett*, 73 Ohio App.3d 244, 248, 596 N.E.2d 1101 (2nd Dist. 1991). A guilty plea renders irrelevant all constitutional violations that are not logically inconsistent with the valid establishment of factual guilt. *Id*. A guilty plea waives procedural issues, except for reviewing whether the

record demonstrates that appellant was improperly coerced into entering a plea. *State v. Kelley*, 57 Ohio St.3d 127, 130, 566 N.E.2d 658 (1991). Specifically, this court has held that by pleading guilty, a defendant waives his right to challenge any defects in the indictment. *State v. Dannemiller*, 5th Dist. Stark No.1999-CA-00263, 2000 WL 1654 (Dec. 6, 1999).

{¶14} Moreover, appellant also maintains that he had co-defendants and that because he did not possess, use or brandish the firearm, he could not be subject to a firearm specification pursuant to R.C. 2941.145. However, the same three-year specification applies whether one is guilty as a principal offender or as an accomplice. See *State v. Chapman*, 21 Ohio St.3d 41, 487 N.E.2d 566 (1986), syllabus.

{¶15} Finally, to the extent that appellant argues that his trial counsel was ineffective, we note that the only issue before this Court is whether or not the trial court erred in dismissing appellant's Petition for Post-Conviction Relief.

{¶16} Based on the foregoing, we find that the trial court did not err in dismissing appellant's Petition for Post-Conviction Relief without appointing counsel or holding a hearing.

{¶17} Appellant's sole assignment of error is, therefore, overruled.

{¶18} Accordingly, the judgment of the Coshocton County Court of Common Pleas is affirmed.

By: Baldwin, J.

Gwin, P.J. and

John Wise, J. concur.