

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-080443
	:	TRIAL NO. B-0309830
Plaintiff-Appellee,	:	
	:	<i>DECISION.</i>
vs.	:	
LA'MON AKEMON,	:	
	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed as Modified

Date of Judgment Entry on Appeal: July 31, 2009

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Philip R. Cummings*,
Assistant Prosecuting Attorney, for Plaintiff-Appellee,

H. Fred Hoefle, for Defendant-Appellant.

Please note: We have removed this case from the accelerated calendar.

Per Curiam.

{¶1} Defendant-appellant La'mon Akemon appeals the Hamilton County Common Pleas Court's judgment overruling his Crim.R. 32.1 motions to withdraw his guilty pleas. We hold that the court had no jurisdiction to entertain the motions.

{¶2} Akemon was convicted in April 2004 upon guilty pleas to two counts of drug trafficking. In December 2004, we affirmed his convictions, and the Ohio Supreme Court declined to accept his appeal there.¹

{¶3} In April 2005, Akemon filed with the common pleas court a Crim.R. 32.1 motion to withdraw his guilty pleas. On October 2, 2006, retained counsel "supplement[ed]" Akemon's pro se motion. And on October 26, 2006, the court overruled the "October 2, 2006" motion. Akemon appealed.

{¶4} Before we could decide that appeal, Akemon, in December 2006, again moved to withdraw his pleas. His December 2006 motion remained pending before the common pleas court while we decided his appeal from the overruling of the October 2006 motion.

{¶5} In November 2007, we decided that appeal.² We held that the common pleas court had erred in overruling Akemon's October 2006 motion without first affording him an opportunity to respond to the state's opposing memorandum.³ And we held that the court's error was not demonstrably harmless to the extent of the motion's challenge to trial counsel's effectiveness. On that basis, we reversed in part the court's judgment overruling the October 2006 motion.⁴

¹ *State v. Akemon* (Dec. 15, 2004), 1st Dist. No. C-040284, appeal not accepted, 105 Ohio St.3d 1518, 2005-Ohio-1880, 826 N.E.2d 315.

² See *State v. Akemon*, 173 Ohio App.3d 709, 2007-Ohio-6217, 880 N.E.2d 143.

³ See *id.* at ¶6.

⁴ See *id.* at ¶15.

{¶6} Following our decision in the appeal, the common pleas court afforded Akemon his reply time, heard arguments on his October 2006 motion and his pending December 2006 motion, and overruled the motions upon its determination that Akemon had failed to demonstrate, as required by Crim.R. 32.1, that withdrawing his pleas was necessary to correct a manifest injustice. This appeal followed.

{¶7} Akemon presents on appeal two assignments of error, contending that the common pleas court erred in overruling, and in failing to conduct an evidentiary hearing on, his motions. We address the assignments of error together and overrule them.

{¶8} In our 2007 decision in Akemon's initial appeal from the overruling of his October 2006 motion, we proceeded as if the trial court had had jurisdiction to entertain his Crim.R. 32.1 motions after his convictions had been affirmed in his direct appeal.⁵ But an appeal from a judgment of conviction divests a trial court of jurisdiction over the case, unless the appellate court remands the case to the trial court for a ruling on a pending motion, or the trial court's exercise of jurisdiction is in aid of the appeal or is otherwise "not inconsistent with [the jurisdiction] of the appellate court to review, affirm, modify or reverse the final order, judgment or decree from which the appeal has been perfected."⁶ And the trial court does not regain jurisdiction after the appellate court has decided the appeal, unless the appellate court remands the case.⁷ Therefore, a trial court has no jurisdiction to

⁵ See *id.* at ¶12-15.

⁶ See *In re Kurtzhalz* (1943), 141 Ohio St. 432, 48 N.E.2d 657, paragraph two of the syllabus; accord *In re S.J.*, 106 Ohio St.3d 11, 2005-Ohio-3215, 829 N.E.2d 1207; *State ex rel. Special Prosecutors v. Judges* (1978), 55 Ohio St.2d 94, 97, 378 N.E.2d 162.

⁷ See *State ex rel. Special Prosecutors*, 55 Ohio St.2d at 97.

entertain a Crim.R. 32.1 motion to withdraw a guilty plea after the defendant has perfected his direct appeal and the judgment of conviction has been affirmed.⁸ And to the extent that our 2007 decision supports the contrary proposition, it is overruled.

{¶9} We affirmed Akemon's convictions in 2004, well before he submitted his 2005 and 2006 motions seeking to withdraw his guilty pleas. Therefore, the common pleas court had no jurisdiction to entertain the motions, and the motions were subject to dismissal without a hearing. Accordingly, we overrule Akemon's assignments of error. And upon the authority conferred by App.R. 12(A)(1)(a), we modify the judgment appealed from to reflect a dismissal of the motions, and we affirm the judgment as modified.

Judgment affirmed.

HILDEBRANDT, P.J., PAINTER and SUNDERMANN, JJ.

Please Note:

The court has placed of record its own entry in this case on the date of the release of this decision.

⁸ Id. at 97-98.