

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
PIKE COUNTY

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee	:	Case No. 08CA790
	:	
v.	:	
	:	
ERIC HORN,	:	<u>DECISION AND</u>
	:	<u>JUDGMENT ENTRY</u>
	:	
Defendant-Appellant.	:	File-stamped date: 9-18-09

APPEARANCES:

Richard M. Nash, Portsmouth, Ohio for appellant.

Robert Junk, Pike County Prosecutor, Waverly, Ohio for appellee.

Kline, P.J.:

{¶1} Eric Horn appeals the trial court’s denial of his post-sentence motion to withdraw his guilty plea. However, we find that the trial court did not abuse its discretion in denying Horn’s motion without a hearing. Accordingly, we affirm the judgment of the trial court.

I.

{¶2} On November 9, 2007, the Pike County grand jury returned a five count indictment against Horn. The indictment charged Horn with two counts of Aggravated Murder, two counts of Aggravated Robbery, and one count of Tampering with Evidence. The first four of these charges all related to the same incident that resulted in the death of Paule E. Shope III.

{¶3} Horn and the state eventually reached a plea agreement. Horn pleaded guilty to a count of murder under R.C. 2903.02(A) as well as a firearm specification under that offense. In return, the state agreed to dismiss the other charges in the indictment. The court held a hearing and concluded that the plea was made voluntarily. The trial court therefore accepted Horn's plea of guilty and, on the same day, imposed a mandatory prison sentence of three years for the firearm specification and a consecutive prison sentence of 15 years to life for the murder charge.

{¶4} The day after the change of plea/sentencing hearing, Horn filed a pro-se motion to withdraw his plea of guilty. "I Eric Horn on this date would like to Request Withdrawal of my plea of guilty back to my original plea of not guilty. I feel that I was not properly represented by my Legal staff. I was cohersed[sic] not to take the case to trial, my attornies[sic] refused to me to take my case to trial. I would like to request new Legal staff once again I don't believe I was properly represented."

{¶5} The trial court then appointed new counsel to represent Horn for the purpose of this motion. The trial court held a hearing on the matter, and the newly appointed counsel immediately moved to withdraw from representing Horn. He believed that the motion to withdraw Horn's plea was not in Horn's best interest and that this fundamental disagreement with his client prevented him from providing zealous representation. Before the trial court ruled on any pending motions, it ordered Horn and his counsel to try one more time to resolve their differences, but they were unable to do so. The trial court then granted counsel's motion to withdraw and denied Horn's motion to withdraw his guilty plea.

{¶6} Horn appeals and raises the following assignment of error for our review. “The trial court erred in denying appellant’s motion to withdraw his plea without holding an evidentiary hearing.”

II.

{¶7} Horn contends that the failure of the trial court to hold an evidentiary hearing was error. He asserts that the hearing the trial court did hold was not an evidentiary hearing regarding his motion to withdraw his plea.

{¶8} Crim.R. 32.1 provides that “[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.” Here, Horn made his pro-se motion to withdraw his guilty plea the day after sentencing. Therefore, Horn must demonstrate that allowing his plea of guilty to stand would result in a manifest injustice. *State v. Smith* (1977), 49 Ohio St.2d 261, paragraph one of the syllabus.

{¶9} The decision of whether to permit the withdrawal of a guilty plea is left to the sound discretion of the trial court. *Smith* at paragraph two of the syllabus; *State v. Lewis*, Lawrence App. No. 08CA10, 2008-Ohio-4888, at ¶14. An abuse of discretion connotes more than an error of judgment; it implies that the trial court’s attitude was arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶10} An evidentiary hearing is unnecessary if the facts as alleged by the defendant, even if true, do not demonstrate a manifest injustice. See *State v. Blatnik* (1984), 17 Ohio App.3d 201, 204. See, also, *Lewis* at ¶15. In addition, “a hearing is not required

where the record, on its face, conclusively and irrefutably contradicts the allegations in support of withdrawal.” *State v. Legree* (1988), 61 Ohio App.3d 568, 574. See *Lewis* at ¶15.

{¶11} “A guilty plea, if induced by promises or threats which deprive it of the character of a voluntary act, is void.” *State v. Milanovich* (1975), 42 Ohio St.2d 46, 49. In his motion, Horn contended that he pleaded guilty, at least in part, because his attorneys refused to take his case to trial, but Horn “failed to submit evidentiary documents apart from the bare allegations contained in his [motion].” See *State v. Kapper* (1983), 5 Ohio St.3d 36, 39. See, also, *Lewis* at ¶17 (self-serving declarations will not rebut a record that shows a plea is voluntary).

{¶12} In *Kapper*, the defendant claimed his guilty pleas were induced by the following litany of factors: “coercion-misrepresentation; ineffective assistance of counsel; [and] violation of [the] plea-bargain agreement.” *Id.* at 36. The defendant contended “his petition alleged off-the-record promises and further alleged that counsel had advised him to deny to the court that any promises had been made.” *Id.* at 37. The Supreme Court of Ohio concluded that the trial court’s Crim.R. 11 colloquy provided an adequate record of the pleas’ voluntary nature. *Id.* at 38. The *Kapper* Court also held “that a petition for post-conviction relief is subject to dismissal without a hearing when the record, including the dialogue conducted between the court and the defendant pursuant to Crim.R. 11, indicates that the petitioner is not entitled to relief and that the petitioner failed to submit evidentiary documents containing sufficient operative facts to demonstrate that the guilty plea was coerced or induced by false promises.” *Id.*

{¶13} This case, unlike *Kapper*, does not arise from a petition for post conviction relief, but Crim.R. 32.1 places the burden on the defendant to demonstrate a manifest injustice. And so we find *Kapper* persuasive under these circumstances.

{¶14} Here, the trial court engaged in a colloquy where Horn agreed no one had “promised [him] anything or threatened [him] in any way in order to induce [him] to withdraw [his] former pleas of not guilty[.]” Transcript, Change of Plea Hearing, at 6. The only statement in Horn’s motion that casts doubt on the voluntariness of his plea is that his attorneys refused to take his case to trial. According to Horn, his attorneys threatened to fail to represent him in the event Horn declined to plead guilty. This claim directly contradicts the previously quoted colloquy, and we find that a trial court does not abuse its discretion when it declines to hold a hearing under these circumstances.

{¶15} Accordingly, we overrule Horn’s only assignment of error and affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED, and Appellant shall pay the 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 Pike County Common Pleas Court 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. Exceptions.

Harsha, J. and McFarland, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Roger L. Kline, Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.