

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
WOOD COUNTY

State of Ohio

Court of Appeals No. WD-11-035

Appellee

Trial Court No. 2011CR0062

v.

Joseph Falin

**DECISION AND JUDGMENT**

Appellant

Decided: July 5, 2011

\* \* \* \* \*

Mollie B. Hojnicky, for appellant.

\* \* \* \* \*

PER CURIAM.

{¶ 1} This matter is before the court on the motion of appellant, Joseph Falin, to stay proceedings pending the resolution of his "Motion to Withdraw Guilty Plea; Request for Hearing," which was filed in the trial court on May 27, 2011. The state has filed no response.

{¶ 2} In *State v. Wilson*, 2d Dist. No. 23167, 2010-Ohio-109, ¶ 16, the court explained:

{¶ 3} "[Defendant's] filing of a notice of appeal from his conviction and sentence divested the trial court of jurisdiction to address his motion to withdraw his plea. *State v. Champion*, Montgomery App. No. 22312, 2008-Ohio-3611, at ¶ 12; *State v. Leach*, Cuyahoga App. No. 84794, 2005-Ohio-1870, at ¶ 16-17. 'Once an appeal is taken, the trial court is divested of jurisdiction except "over issues not inconsistent with that of the appellate court to review, affirm, modify or reverse the appealed judgment, such as the collateral issues like contempt \* \* \*.'" *State ex rel. State Fire Marshal v. Curl*, 87 Ohio St.3d 568, 570, 2000-Ohio-248, quoting *State ex rel. Special Prosecutors v. Judges, Court of Common Pleas* (1978), 55 Ohio St.2d 94, 97. A motion to withdraw a plea is not a collateral issue, because it could directly affect the judgment under appeal. *State v. Winn* (Feb. 19, 1999), Montgomery App. No. 17194."

{¶ 4} Upon due consideration, appellant's motion to stay proceedings is found well-taken and hereby granted. The cause is remanded to the Wood County Court of Common Pleas to allow that court to rule on the motion to withdraw guilty plea within 60 days from the date of this decision. The proceedings in this court are stayed until further order of the court. The clerk of the Wood County Court of Common Pleas shall notify this court when the trial court judge has ruled on defendant's motion to withdraw his guilty plea. It is so ordered.

MOTION GRANTED.

Peter M. Handwork, J.

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JUDGE

Thomas J. Osowik, P.J.

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JUDGE

Stephen A. Yarbrough, J.  
CONCUR.

\_\_\_\_\_  
JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.