

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

State of Ohio

Court of Appeals No. L-14-1051

Appellee

Trial Court No. CR0201302571

v.

Andre Navalle Moorer

DECISION AND JUDGMENT

Appellant

Decided: May 1, 2015

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Jennifer Liptack-Wilson, Assistant Prosecuting Attorney,
for appellee.

Tim A. Dugan, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas that denied appellant Andre Moorer's motion to withdraw his plea of no contest to one count of trafficking in cocaine. For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} On August 1, 2013, Toledo Police officers stopped a vehicle driven by appellant for a traffic violation. After obtaining appellant's consent to search the car, officers found a substance later identified as 27.75 grams of cocaine. On September 12, 2013, appellant was indicted on one count of possession of cocaine in violation of R.C. 2925.11(A) and one count of trafficking in cocaine in violation of R.C. 2925.03(A)(2). On December 16, 2013, appellant filed a motion to suppress evidence obtained by police and the matter was set for a hearing. Prior to the hearing, appellant withdrew his original plea of not guilty and entered a plea of no contest to one count of trafficking in cocaine. The state agreed to dismiss the second count at sentencing.

{¶ 3} When appellant appeared for sentencing on February 13, 2014, he indicated a desire to file a motion to withdraw his plea. The case was continued and counsel filed a motion the following day. On February 14, 2014, the trial court held a hearing on appellant's motion to withdraw his plea. Counsel argued that appellant wished to withdraw his plea in order to consult with other counsel and have the opportunity to review the evidence against him. The trial court denied appellant's motion and proceeded to sentencing. Appellant was sentenced to a mandatory five-year term of imprisonment. This timely appeal followed.

{¶ 4} Appellant sets forth two assignments of error:

- 1) The Trial Court abused its discretion by denying Appellant's motion to withdraw his no contest plea.

2) Trial Counsel rendered ineffective assistance of counsel in perusing Appellant's motion to withdraw his no contest plea.

{¶ 5} In support of his first assignment of error, appellant asserts that, after a dialog with trial counsel, the court should have asked appellant why he wished to withdraw his plea. Appellant argues that the trial court failed to seek all of the information necessary to make its decision.

{¶ 6} Crim.R. 32.1 permits a defendant to file a presentence motion to withdraw his plea, which is to be "freely and liberally granted." *State v. Xie*, 62 Ohio St.3d 521, 527, 584 N.E.2d 715 (1992). On hearing such a motion, the trial court should "determine whether there is a reasonable and legitimate basis for the withdrawal of the plea." *Id.* at paragraph one of the syllabus. However, there is no absolute right to withdraw a plea prior to sentencing, and a trial court's denial of a presentence motion to withdraw a plea will not be reversed on appeal in the absence of an abuse of discretion. *Id.* at paragraphs one and two of the syllabus. An abuse of discretion connotes more than an error of law or judgment, instead requiring a finding that the trial court's decision was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 7} The factors to be considered by the trial court in determining whether a presentence motion to withdraw a plea is warranted include:

- (1) whether the prosecutor would be prejudiced if the plea was vacated;
- (2) whether the accused was represented by highly competent counsel;

(3) whether the accused was given a full Crim.R. 11 hearing; (4) whether a full hearing was held on the motion; (5) whether the trial court gave full and fair consideration to the motion; (6) whether the motion was made within a reasonable time; (7) whether the motion set forth specific reasons for the withdrawal; (8) whether the accused understood the nature of the charges and possible penalties; and (9) whether the accused was perhaps not guilty or had a complete defense to the crime. *State v. Eversole*, 6th Dist. Erie Nos. E-05-073, E-05-074, E-05-075, and E-05-076, 2006-Ohio-3988, ¶ 13, citing *State v. Fish*, 104 Ohio App.3d 236, 240, 661 N.E.2d 788 (1st Dist.1995).

{¶ 8} We have reviewed the record of proceedings in the trial court along with the *Eversole* factors listed above. We conclude that the trial court's decision to deny appellant's motion was not an abuse of discretion. The record reflects that the trial judge clearly explained her reasons for denying the motion. Most importantly, we find that appellant received a full Crim.R. 11 hearing and a hearing on his motion. There is no indication or argument that appellant did not understand the nature of the charges and possible penalties, or that he was perhaps not guilty or had a complete defense to the crime. In fact, appellant admitted transporting the cocaine to Fostoria, Ohio, for the purpose of selling it. Appellant simply argues that the trial court should have asked him directly why he wanted to withdraw his plea.

{¶ 9} The trial court gave full and fair consideration to appellant's motion to withdraw his plea. Based on the foregoing, appellant's first assignment of error is not well-taken.

{¶ 10} In support of his second assignment of error, appellant asserts that trial counsel was ineffective because he did not argue appellant's reasons for wishing to withdraw his plea.

{¶ 11} It is well-established that claims of ineffective assistance of counsel are reviewed under the standard set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). In order to prove ineffective assistance of counsel, appellant must demonstrate both that counsel's representation fell below an objective standard of reasonableness and that, but for counsel's perceived errors, the outcome would have been different. *Id.* at 687.

{¶ 12} Applying *Strickland* to the record herein and the argument made by appellant, we are unable to find that counsel's representation fell below a standard of reasonableness or that, but for counsel's perceived errors, the outcome of this matter would have been different. Based on the foregoing, appellant's second assignment of error is not well-taken.

{¶ 13} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. Costs of this appeal are assessed to appellant pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, P.J.

JUDGE

James D. Jensen, 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>.