

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio, :  
 :  
 Plaintiff-Appellee, :  
 :  
 v. : No. 11AP-646  
 : (C.P.C. No. 08CR08-6158)  
 Quian R. Britford, : (REGULAR CALENDAR)  
 :  
 Defendant-Appellant. :

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D E C I S I O N

Rendered on May 3, 2012

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*Ron O'Brien*, Prosecuting Attorney, and *Steven L. Taylor*, for appellee.

*Quian R. Britford*, pro se.

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APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶ 1} Defendant-appellant, Quian R. Britford, appeals from a judgment of the Franklin County Court of Common Pleas denying his motion to withdraw guilty plea. For the following reasons, we affirm that judgment.

**Factual and Procedural Background**

{¶ 2} In 2008, a Franklin County Grand Jury indicted appellant with one count of attempted murder in violation of R.C. 2923.02 and 2903.02, one count of felonious assault in violation of R.C. 2903.11,<sup>1</sup> and one count of having a weapon while under disability in violation of R.C. 2923.13. After initially entering a not guilty plea to those charges, appellant withdrew that plea and entered an Alford Plea to one count of felonious

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<sup>1</sup> These two counts also contained firearm specifications pursuant to R.C. 2941.145.

assault and the attendant firearm specification. On October 5, 2009, the trial court accepted appellant's plea, found him guilty, and sentenced him to a jointly-recommended prison sentence of seven years for his felonious assault conviction and a consecutive three years for the firearm specification. Appellant attempted to appeal that judgment, but this court dismissed that appeal because he did not file the appeal within 30 days of the date of the entry of judgment as required by App.R. 4(A).

{¶ 3} Shortly thereafter, appellant began filing multiple motions in the trial court seeking relief on a number of grounds. Appellant also filed a petition for post-conviction relief pursuant to R.C. 2953.21. The trial court denied these motions, once noting that "[t]he repeated filing of the same motions and motions having different captions but the same, previously-rejected arguments does not change this conclusion."

{¶ 4} Undeterred, appellant filed the present motion to withdraw guilty plea pursuant to Crim.R. 32.1. Appellant alleged claims of ineffective assistance of counsel, double jeopardy and other sentencing issues, and failure to properly accept his guilty plea. The trial court denied appellant's motion, based on res judicata and appellant's failure to establish any basis for the withdrawal of his plea.

{¶ 5} Appellant appeals that decision and assigns the following errors:

[1.] THE APPELLANT WAS DENIED OF HIS ABSOLUTE RIGHTS TO HAVE EFFECTIVE ASSISTANCE OF COUNSEL FOR HIS DEFENCE AT EVERY STAGE OF THE CRIMINAL PROCEEDING, WHEN COUNSEL FAILED TO INVOKE THE CONTEMPERONOUS OBJECTION RULE, AND OBJECT TO SENTENCING GUIDELINES BY INFORMING THE COURTS AND THE APPELLANT THAT HIS CRIMINAL CASE IS TIME BARRED BY THE DOUBLE JEOPARDY CLAUSE.

[2.] THE APPELLANT WAS TWICE PUT IN JEOPARDY OF LIFE AND LIMB ON OFFENSES THAT ARISES OUT OF THE SAME COURSE OF CONDUCT AS THE ORIGINAL COMPLAINT AND OFFENSE OF AGG. MENANCING THREAT, AFTER RECEIVING A FINAL APPEALABLE ORDER BY THE LOWER COURT IN WHICH THE APPELLANT CASE ARISES OUT OF PURSUANT TO 2945.73(C) WHICH IS A BAR TO ANY FURTHER PROSECUTION AGAINST A PERSON THAT ARISES OUT OF THE SAME COURSE OF CONDUCT.

[3.] THE APPELLANT RIGHT SECURED UP UNDER THE BOTH THE FIFTH AND THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION WERE VIOLATED WHEN THE TRIAL COURT ERROR THE PREJUDICE OF THE APPELLANT BY CONVICTING HIM ON CHARGES THAT AMOUNT TO ALLIED OFFENSES UP UNDER O.R.C. 2941.25. AGG. MENACING THREAT IS A LESSOR INCLUDED OFFENSE OF FELONIOUS ASSAULT. TO WHICH CONSTITUTES AS DOUBLE JEOPARDY.

[4.] THE TRIAL COURT ERROR IN THE PREJUDICE OF THE APPELLANT BY NOT INQUIRING INTO HIS REASON FOR PLEADING GUILTY PURSUANT TO :ALFORD PLEA, ABSENT THE PRESENTATION OF SOME BASIC FACTS SURROUNDING THE CHARGE, THERE CAN BE NO DETERMINATION THAT THE APPELLANT MAD A INTELLIGENT AND VOLUNTARY GUILTY PLEA, BECAUSE THE ABSENCE OF BASIC FACTUAL FRAMEWORK PRECLUDES THE TRIAL JUDGE FROM EVALUATING THE REASONABLENESS OF THE APPELLANTS DECISION TO PLEAD GUILTY, NOTWITHSTANDING THE PROTESTATION OF INNOCENCE.

[5.] THE TRIAL COURT ABUSED ITS DISCRETION IN THE DENIAL OF THE APPELLANT'S MOTION TO WITHDRAW HIS GUITTY PLEA.

(Sic passim.)

#### **Appellant's First through Fourth Assignments of Error – Res Judicata**

{¶ 6} Appellant's first four assignments of error are barred by res judicata. The doctrine of res judicata bars the assertion of claims against a valid, final judgment of conviction that have been raised or could have been raised on appeal. *State v. Ketterer*, 126 Ohio St.3d 448, 2010-Ohio-3831, ¶ 59, citing *State v. Perry*, 10 Ohio St.2d 175 (1967), paragraph nine of the syllabus.

{¶ 7} The claims appellant raises in these assignments of error all could have been raised in a direct appeal from his original conviction. Because appellant could have but did not raise these arguments in a direct appeal, res judicata bars him from raising them in this appeal. *State v. Griffin*, 9th Dist. No. 24179, 2009-Ohio-1212, ¶ 8 (res judicata bars consideration of issues which defendant could have raised in a timely appeal from conviction in a subsequent appeal from a denial of motion to withdraw plea).

{¶ 8} We recognize that exceptions to res judicata apply to void judgments or to claims that are supported by evidence outside the record. *State v. Mitchell*, 187 Ohio App.3d 315, 2010-Ohio-1766, ¶ 22, fn. 1 (6th Dist.), citing *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, ¶ 30 (void judgment); *State v. Brown*, 167 Ohio App.3d 239, 2006-Ohio-3266, ¶ 7 (10th Dist.) (evidence outside the record). However, appellant does not present any evidence outside the record to support his claims and the arguments he does make would not render the trial court's judgment void. Accordingly, res judicata bars consideration of appellant's issues in these assignments of error.

{¶ 9} We overrule appellant's first through fourth assignments of error.

#### **Appellant's Fifth Assignment of Error —Manifest Injustice**

{¶ 10} In this assignment of error, appellant contends the trial court erred by denying his motion to withdraw without a hearing. Because appellant could not have raised this issue in a previous appeal, res judicata does not prevent him from doing so now. Crim.R. 32.1 permits a motion to withdraw a guilty plea "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." "Manifest injustice relates to some fundamental flaw in the proceedings which result[s] in a miscarriage of justice or is inconsistent with the demands of due process." *State v. Sappington*, 10th Dist. No. 09AP-988, 2010-Ohio-1783, ¶ 7, quoting *State v. Williams*, 10th Dist. No. 03AP-1214, 2004-Ohio-6123, ¶ 5. A defendant who seeks to withdraw a guilty plea after the imposition of sentence carries the burden of establishing the existence of manifest injustice. *State v. Smith*, 49 Ohio St.2d 261 (1977), paragraph one of the syllabus. Manifest injustice is an extremely high standard, and a defendant may only withdraw his guilty plea in extraordinary cases. *State v. Tabor*, 10th Dist. No. 08AP-1066, 2009-Ohio-2657, ¶ 6, citing *State v. Price*, 4th Dist. No. 07CA47, 2008-Ohio-3583, ¶ 11.

{¶ 11} A motion made pursuant to Crim.R. 32.1 is addressed to the sound discretion of the trial court. *Sappington* at ¶ 8, citing *Smith* at paragraph two of the syllabus. Therefore, this court's review of a trial court's denial of a post-sentence motion to withdraw a guilty plea is limited to a determination of whether the trial court abused its discretion. *State v. Conteh*, 10th Dist. No. 09AP-490, 2009-Ohio-6780, ¶ 16. An

abuse of discretion implies that the court's attitude was unreasonable, arbitrary, or unconscionable. *State v. Widder*, 146 Ohio App.3d 445, 2001-Ohio-1521, ¶ 6 (9th Dist.).

{¶ 12} A trial court is not required to hold an evidentiary hearing on a post-sentence motion to withdraw a guilty plea, except when the facts, as alleged by the defendant, indicate a manifest injustice would occur if the plea was allowed to stand. *State v. Thomson*, 6th Dist. No. L-05-1213, 2006-Ohio-1224, ¶ 58. An evidentiary hearing is not required if the arguments presented by the petitioner are barred by the doctrine of res judicata. *Id.*

{¶ 13} Appellant's arguments in support of his motion to withdraw were all barred by the doctrine of res judicata. *State v. Hazel*, 10th Dist. No. 10AP-1013, 2011-Ohio-4427, ¶ 18, citing *Ketterer* at ¶ 59 (applying res judicata to bar a defendant from raising any issue in a post-sentence motion to withdraw a guilty plea that could have been raised at trial or on direct appeal); *Brown*. Accordingly, the trial court did not abuse its discretion by finding that appellant failed to demonstrate a manifest injustice sufficient to allow the withdrawal of his guilty plea. For the same reason, the trial court did not err by denying his motion to withdraw his guilty plea without a hearing. *See State v. Russell*, 10th Dist. No. 04AP-1149, 2005-Ohio-4063, ¶ 7 (no abuse of discretion denying motion for new trial without a hearing where application of res judicata to claims was clear). Therefore, we overrule appellant's fifth assignment of error.

{¶ 14} Having overruled appellant's five assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

BROWN, P.J., and FRENCH, J., concur.

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