

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 11AP-799
v.	:	(C.P.C. No. 06CR-4954)
	:	
Gloria J. Sansone,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 19, 2012

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

Yeura R. Venters, Public Defender, and *David L. Strait*, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

BRYANT, J.

{¶ 1} Defendant-appellant, Gloria J. Sansone, appeals from a judgment of the Franklin County Court of Common Pleas denying her Crim.R. 32.1 motion to withdraw her guilty plea. Defendant assigns a single error:

The trial court erred in failing to vacate Appellant's guilty plea. Because the trial court did not err in denying defendant's motion to withdraw her guilty plea, we affirm.

I. Facts and Procedural History

{¶ 2} By indictment filed July 6, 2006, defendant was charged with one count of compelling prostitution in violation of R.C. 2907.21, a felony of the third degree. Although defendant initially entered a not guilty plea, she changed her plea on September 28, 2006 to guilty; the court set sentencing for November 9, 2006. After reviewing the presentence investigation, the trial court sentenced defendant to three years of incarceration, granting defendant 135 days of jail-time credit. The court journalized its sentence in a judgment entry filed November 22, 2006.

{¶ 3} Following her conviction, defendant filed three motions for judicial release, on May 30 and December 3, 2007, and June 3, 2008, respectively; the trial court denied each motion. On July 26, 2011, defendant filed a motion to set aside her judgment of conviction and to withdraw her guilty plea. She asserted she was denied the effective assistance of counsel in entering her plea because her attorney failed to advise her that she would be classified as a sex offender and would be required to comply with state law regarding notification and registration. She further asserted the plea was not knowing, intelligent, and voluntary because the trial court likewise failed to advise her of her obligations under the sex offender statutes. According to her motion, she only learned of the requirements when she was released from prison and would not have entered her guilty plea had she known of the requirements.

{¶ 4} After the parties fully briefed the motion, the court entered a decision and entry on August 26, 2011, denying the motion because it failed to demonstrate manifest injustice. Defendant timely appeals.

II. Assignment of Error—Crim.R. 32.1

{¶ 5} Defendant's single assignment of error asserts the trial court erred in failing to grant her motion to withdraw her guilty plea.

{¶ 6} A defendant may seek to withdraw a plea pursuant to Crim.R. 32.1, which 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, defendant moved to withdraw her plea after sentencing, so the issue resolves to whether the motion must be granted to correct a manifest injustice.

{¶ 7} Defendant bears the burden of establishing a manifest injustice based on specific facts in the record or facts supplied through affidavits attached to the motion. *State v. Hagler*, 10th Dist. No. 10AP-291, 2010-Ohio-6123, ¶ 7, citing *State v. Orris*, 10th Dist. No. 07AP-390, 2007-Ohio-6499. Because a Crim.R. 32.1 motion is addressed to the sound discretion of the trial court, our review is limited to determining whether the trial court abused its discretion in concluding no manifest injustice occurred. *State v. Marable*, 10th Dist. No. 03AP-97, 2003-Ohio-6653, ¶ 9 (citations omitted); *see also State v. Boyd*, 10th Dist. No. 97APA12-1640 (Oct. 22, 1998), *appeal not allowed*, 85 Ohio St.3d 1424 (1999) (listing factors the trial court properly may consider in exercising its discretion).

{¶ 8} Although the term "manifest injustice" has been variously defined, "it is clear that under such standard, a postsentence withdrawal motion is allowable only in extraordinary cases." *State v. Smith*, 49 Ohio St.2d 261, 264 (1977), citing *United States v. Semel*, 347 F.2d 228 (4th Cir.1965), *cert. denied*, 382 U.S. 840 (1965). "A manifest injustice comprehends a fundamental flaw in the path of justice so extraordinary that the defendant could not have sought redress from the resulting prejudice through any form of application reasonably available to him." *State v. Shupp*, 2d Dist. No. 06CA62, 2007-Ohio-4896, ¶ 6. Defendant premises her motion on the failure of the trial court and her attorney to advise her of her obligations as a sexually oriented offender.

{¶ 9} At the time defendant was convicted, R.C. Chapter 2950, known as Megan's Law, classified a defendant by operation of law as a sexually oriented offender, or by court action as a sexual predator or habitual sexual offender. Defendant, a sexually oriented offender, had registration obligations under Megan's Law once she completed her sentence. In terms of notice to the offender of such obligations, former R.C. 2950.03(A)(2) required that "if the * * * offender * * * is sentenced for the sexually oriented offense on or after January 1, 1997 * * * the judge shall provide the notice to the offender at the time of sentencing," a duty that includes not only informing a defendant of his or her status but also of the duty to register and any related requirements. *See* R.C. 2950.03(B)(1).

{¶ 10} Congress subsequently passed the Adam Walsh Child Protection Safety Act ("AWA") in 2006. *See* 42 U.S.C.A. § 16901 et seq. The AWA created national standards for sexual offender classification, including registration and community notification

requirements. In 2007, Ohio enacted its version of the AWA in Am.Sub.S.B. No. 10 (2007 Ohio Legis.Serv. L-401), effective January 1, 2008. Ohio's AWA repealed the sexual offender registration established under Megan's Law and its three classifications, and it replaced them with a new, three-tiered system. Because defendant was convicted before January 1, 2008, she is subject to the requirements of Megan's Law. *See State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374 (holding the provisions of the AWA may not be applied retroactively).

A. *Ineffective Assistance of Counsel*

{¶ 11} To prove ineffective assistance of counsel, defendant must show that counsel's performance was deficient. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To meet that burden, first she must demonstrate counsel's errors were so serious that counsel was not functioning as the "counsel" the Sixth Amendment guarantees. *Id.* Second, she must demonstrate that counsel's deficient performance prejudiced the defense. *Id.* Unless a defendant demonstrates both, the conviction cannot be said to have resulted from a breakdown in the adversary process that renders the result unreliable. *Id.*

{¶ 12} Here, in terms of counsel's allegedly deficient performance, defendant's motion never states defense counsel did not advise her of the sex offender obligations that would accompany her conviction. Nor did she submit an affidavit so stating. Her memorandum accompanying her motion, however, assumed such facts when, in attempting to demonstrate prejudice, defendant stated she would not have entered the plea had she been so advised.

{¶ 13} In determining whether defendant's assertion is credible, the trial court properly could note that defendant failed to submit an affidavit averring counsel's alleged failure. *See State v. Barrett*, 10th Dist. No. 11AP-375, 2011-Ohio-4986, ¶ 8 (determining a defendant, seeking post-sentence to withdraw a guilty plea "bears the burden of establishing manifest injustice based on specific facts either contained in the record or supplied through affidavits"). In addition, the trial court could note the time-lapse involved. *State v. Bush*, 96 Ohio St.3d 235, 2002-Ohio-3993, ¶ 14, quoting *Smith* at paragraph three of the syllabus.

{¶ 14} Defendant did not file her motion to withdraw her guilty plea until approximately five years after her conviction. " 'An undue delay between the occurrence of

the alleged cause for withdrawal of a guilty plea and the filing of a motion under Crim.R. 32.1 is a factor adversely affecting the credibility of the movant and militating against the granting of the motion.' " *Hagler* at ¶ 11, quoting *Smith* at paragraph three of the syllabus. Moreover, defendant acknowledges she was advised of her requirements under Megan's Law at the time she was released from prison, but she failed to file a motion to withdraw her guilty plea until nearly two years later.

{¶ 15} Defendant responds with the United States Supreme Court's decision in *Padilla v. Kentucky*, 130 S.Ct. 1473 (2010). Padilla contended his attorney's performance at his plea hearing was deficient because counsel wrongly informed him about the deportation consequences of a guilty plea. In resolving the issue, *Padilla* decided defense counsel's representation was deficient in failing to accurately inform Padilla about the risk of deportation that accompanied his guilty plea.

{¶ 16} *Padilla's* applicability is questionable, since defendant's compliance with the provisions of Megan's Law is considerably less onerous than being forced to leave the United States as a result of a guilty plea. *State v. Cupp*, 2d Dist. No. 21176, 2006-Ohio-1808. Indeed, the legislature tacitly reached the same conclusion, as a specific statute, R.C. 2943.031 requires a trial court to inquire about a defendant's citizenship in a plea proceeding and to advise of the potential issue with immigration status, but defendant cites no similar statute with respect to sex offender classification. *Id.* Although defense counsel would be well-advised to explain the notification and registration consequences of a guilty plea to a defendant charged with a sex offense, we cannot say counsel's alleged failure here rises to a manifest injustice.

B. Trial Court in Crim.R. 11 Proceedings

{¶ 17} Defendant also asserts the trial court was required to advise her, during the Crim.R. 11 proceedings, of the sexual offender consequences of a guilty plea.

{¶ 18} "[A] trial court need not inform a defendant about the registration and notification requirements in Ohio Revised Code Chapter 2950 before accepting a plea." *State v. Bush*, 2d Dist. No. 10CA82, 2011-Ohio-5954, ¶ 15, citing *In re C.A.*, 2d Dist. No. 23022, 2009-Ohio-3303, ¶ 56; *Cupp, supra*, and *State v. Abrams*, 2d Dist. No. 17459 (Aug. 20, 1999). As *Cupp* explained, "the registration and notification requirements" are "collateral consequences of a defendant's guilty plea to a sex offense." *Id.* at ¶ 10, citing

State v. Condrón, 2d Dist. No. 16430 (Mar. 27, 1998) (noting that "[b]ecause Megan's laws are not punitive, the registration and notification requirements are collateral consequences of a defendant's guilty plea"). Because they are collateral, a trial court's failure to advise of them does not render the plea invalid. *Cupp* at ¶ 10, and cases it cites.

{¶ 19} In the final analysis, defendant failed to demonstrate manifest injustice. The trial court was not required to advise defendant, at her plea proceedings, of her obligations under Megan's Law. Moreover, in the absence of affidavits to the contrary and in light of the significant time-lapse involved, the trial court did not abuse its discretion in concluding defendant failed to demonstrate a manifest injustice based on the alleged failure of her attorney to advise her regarding the requirements of Megan's Law. Accordingly, defendant's single assignment of error is overruled.

III. Disposition

{¶ 20} Having overruled defendant's single assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN, P.J., and KLATT, J., concur.
