

[Cite as *State v. Stewart*, 2012-Ohio-1815.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 11AP-848
v.	:	(C.P.C. No. 98CR-1288)
	:	
Jason L. Stewart,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on April 24, 2012

Ron O'Brien, Prosecuting Attorney, and *Sheryl L. Prichard*,
for appellee.

Jason L. Stewart, pro se.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶ 1} Defendant-appellant, Jason L. Stewart ("appellant"), appeals the judgment of the Franklin County Court of Common Pleas denying his motion to withdraw his guilty plea. For the following reasons, we affirm.

I. BACKGROUND

{¶ 2} On October 5, 1998, appellant pleaded guilty to two counts of aggravated murder with death penalty specifications, one count of kidnapping, and one count of burglary. The trial court accepted the plea, and it sentenced him to 28 years to life

imprisonment rather than the death penalty. Appellant did not appeal his conviction. Afterward, on June 23, 2011, appellant filed a motion to withdraw his guilty plea, and the court denied it.

II. ASSIGNMENT OF ERROR

{¶ 3} Appellant filed a timely notice of appeal and now assigns the following as error:

THE TRIAL COURT ERRED AND DEPRIVED THE APPELLANT OF DUE PROCESS OF LAW IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENT[S] TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION[S] 10 AND 16 OF [SIC] CONVICTION WHERE THE STATE FAILED TO PRESENT SUFFICIENT EVIDENCE TO THREE JUDGES WHEN A THREE JUDGE PANEL IS THE ONLY WAY TO ACCEPT A GUILTY PLEA TO AGGRAVATED MURDER WITH [A] DEATH PENALTY SPECIFICATION.

III. DISCUSSION

{¶ 4} In his single assignment of error, appellant contends that we must reverse the trial court's decision to deny his motion to withdraw his guilty plea. We disagree.

{¶ 5} We need not disturb the trial court's decision absent an abuse of discretion. *See State v. Sappington*, 10th Dist. No. 09AP-988, 2010-Ohio-1783, ¶ 8. An abuse of discretion connotes more than an error of law or judgment; it entails a decision that is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). With this standard in mind, we consider the trial court's decision to deny appellant's motion.

{¶ 6} Appellant argued in his motion that his guilty plea must be set aside because he did not have a three-judge panel at his plea hearing. He relied on R.C. 2945.06 and Crim.R. 11(C)(3), which require that there be a three-judge panel at a guilty plea hearing in a death penalty case. But his claim is barred by res judicata given that he could have previously raised it during a direct appeal of his conviction. *See State v. Nooks*, 10th Dist. No. 10AP-108, 2010-Ohio-2982, ¶ 8. Therefore, the trial court did not abuse its discretion by denying appellant's motion to withdraw his guilty plea. We overrule appellant's single assignment of error.

IV. CONCLUSION

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

Judgment affirmed.

TYACK and DORRIAN, JJ., concur.
