

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 13AP-16
 : (C.P.C. No. 95CR-183)
 Tyrone Martin, :
 : (ACCELERATED CALENDAR)
 Defendant-Appellant. :

D E C I S I O N

Rendered on May 2, 2013

Ron O'Brien, Prosecuting Attorney, and *Valerie Swanson*, for appellee.

Tyrone Martin, pro se.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} Tyrone Martin is appealing from the trial court's refusal to allow him to withdraw his guilty plea after sentencing had occurred. He assigns three errors for our consideration:

Assignment of Error No: 1 Appellant argues his Sentence and Conviction was Contrary to Ohio Law pursuant to R.C. 2945.06 and Crim. R. 11(C)(3) this case should have been heard [sic] by a three-judge panel even if the state agreed that it would not seek the death penalty.

Assignment of Error No: [2] The trial court lacked jurisdiction to accept appellant's pleas because only a single

judge accepted the pleas in violation of R.C. 2945.06. Appellant's plea was not made voluntarily, knowingly, or intelligently pursuant to Crim. R. 11(C)(3).

Assignment of Error No: [3] The trial court failed to inform Appellant of his appellate rights at sentencing pursuant to Crim. R. 11.

{¶ 2} Martin was indicted on three counts of aggravated murder, with specification, one count of aggravated burglary and one count of aggravated robbery. In February 1996, he entered into a plea bargain under the terms of which he pled guilty to a single charge of aggravated murder with a specification, the aggravated burglary charge and the aggravated robbery charge. The parties agreed to a sentence of life imprisonment with eligibility for parole after 30 years of incarceration. The trial court judge gave the jointly recommended sentence.

{¶ 3} Over 16 years later, Martin filed a motion seeking to set aside his guilty pleas, primarily on the grounds that a single judge accepted the plea bargain, as opposed to a three-judge panel accepting the pleas and the jointly recommended sentence.

{¶ 4} The trial court judge assigned to the case did not find that a manifest injustice had occurred such that the pleas could be set aside. *See* Crim.R. 32.1, which reads:

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.

{¶ 5} Further, the trial court found the 16-year delay in filing the motion to be a problem.

{¶ 6} The trial court did not err in its assessment of the case. Clearly, the common pleas court had jurisdiction to hear the case. The failure to have a panel of three judges accept the agreed resolution of the case may have been an error, but it did not take jurisdiction away from the trial court. The mistake could have been addressed via a direct appeal, but was not. We follow the decision of the Supreme Court of Ohio in *State v. Pless*, 74 Ohio St.3d 333 (1996) in this regard.

{¶ 7} Further, the failure of the judge who accepted the pleas to advise Martin of his right to appeal from his agreed sentence did not justify a delay of over 16 years in questioning of the trial court proceedings.

{¶ 8} The three assignments of error are overruled. The judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

DORRIAN and McCORMAC, JJ., concur.

McCORMAC, J., retired, formerly of the Tenth Appellate District, assigned to active duty under the authority of Ohio Constitution, Article IV, Section 6(C).
