

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 10AP-108
v.	:	(C.P.C. No. 98CR-6443)
	:	
Jonathan W. Nooks, Jr.,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

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D E C I S I O N

Rendered on June 29, 2010

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*Ron O'Brien*, Prosecuting Attorney, and *Kimberly Bond*, for appellee.

*Jonathan W. Nooks, Jr.*, pro se.

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APPEAL from the Franklin County Court of Common Pleas.

McGRATH, J.

{¶1} Defendant-appellant, Jonathan W. Nooks, Jr. ("appellant"), was indicted on two counts of aggravated murder with death penalty specifications, one count of aggravated robbery, and one count of having a weapon while under disability. He entered a plea of "not guilty" at arraignment, but, subsequently, a plea agreement was reached under the terms of which appellant was permitted to plead guilty to one count of aggravated murder with a firearm specification. His sentence on this charge was 20 years to life, with an additional three years of incarceration for the firearm specification. Appellant also agreed to plead guilty to aggravated robbery. His sentence on this charge

was five years of incarceration, to be served consecutively to the sentence on the aggravated murder charge. The trial court accepted the plea and sentenced appellant in accord with the plea agreement. The guilty pleas resulted in appellant avoiding the possibility of being executed.

{¶2} Appellant appealed, arguing that the trial court erred by entering judgment of conviction based upon a guilty plea that was not knowing, intelligent, and voluntary. This court affirmed in *State v. Nooks* (Mar. 21, 2000), 10th Dist. No. 99AP-760 ("*Nooks I*").

{¶3} In June 2008, appellant filed another motion, which sought to have the judgment of his conviction voided pursuant to Civ.R. 60(B) based, in part, on *State v. Colon*, 118 Ohio St.3d 26, 2008-Ohio-1624. The trial court denied appellant's motion, and this court affirmed. *State v. Nooks* (Mar. 24, 2009), 10th Dist. No. 08AP-717, memorandum decision ("*Nooks II*").

{¶4} In 2009, approximately a decade after appellant pled guilty, he filed a motion seeking to withdraw his guilty plea pursuant to Crim.R. 32.1. The trial court denied appellant's motion. Appellant filed a timely appeal, assigning the following as error:

#### FIRST ASSIGNMENT OF ERROR

Trial court entertained the appellant's arguments when appellant's sentence is void.

#### SECOND ASSIGNMENT OF ERROR

Trial court violated appellant's right to due process, violated appellant's right to double jeopardy, and the doctrine of res judicata did not apply.

{¶5} We shall address both of appellant's assignments of error together as they are interrelated. A criminal defendant can file a Crim.R. 32.1 motion to withdraw a guilty plea after the imposition of a sentence in order to correct "manifest injustice." See *State v. Smith* (1977), 49 Ohio St.2d 261, paragraph one of the syllabus. Accordingly, where a criminal defendant, subsequent to the imposition of sentence, files a motion to withdraw a guilty plea on the basis of a manifest injustice, including a constitutional violation, such a motion is a Crim.R. 32.1 motion. See *State v. Bush*, 96 Ohio St.3d 235, 2002-Ohio-3993.

{¶6} Crim.R. 32.1 provides that "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." What constitutes "manifest injustice" has been variously defined, but such a standard allows a post-sentence motion to withdraw only in extraordinary cases. *Id.* Although Crim.R. 32.1 does not prescribe a time limitation, 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." *Smith*, at paragraph three of the syllabus. Further, whether a movant has demonstrated a manifest injustice is addressed to the sound discretion of the trial court, and the court's denial of a motion to withdraw a guilty plea will not be reversed absent an abuse of discretion. *State v. Glass*, 10th Dist. No. 04AP-967, 2006-Ohio-229, ¶18.

{¶7} Appellant suggests that withdrawing his guilty plea will correct a manifest injustice because: (1) the trial judge lacked jurisdiction to accept his guilty plea and a three judge panel was required; (2) the indictment charging appellant was defective; and (3) appellant's sentences are void. Appellant argues that the trial court, which denied

appellant's motion based on the doctrine of res judicata, erred because a violation of Crim.R. 11(C)(3) defeats the doctrine of res judicata.

{¶8} Upon review, we find appellant's argument has no merit. In this case, it was obvious at the time appellant entered his plea of guilty that a single judge of the common pleas court accepted appellant's plea and imposed sentence. Consequently, any failure to abide by R.C. 2945.06 or Crim.R. 11(C)(3) had to be raised on direct appeal. *State v. Porterfield*, 11th Dist. No. 2008-T-0002, 2008-Ohio-5948, ¶19; see also *State ex rel. Rash v. Jackson*, 102 Ohio St.3d 145, 2004-Ohio-2053, ¶9 ("failure to comply with the three-judge-panel requirement of R.C. 2945.06 constitute[s] an error in the court's exercise of jurisdiction, which must be raised on direct appeal"). Indeed, appellant did file a direct appeal, but he did not raise this issue. As such, and contrary to appellant's understanding of the law, appellant's argument is barred by res judicata.

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

*Judgment affirmed.*

TYACK, P.J., and CONNOR, J., concur.

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