

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 09AP-1129 (C.P.C. No. 09CR-3084)
Lorenzo Angus,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on July 13, 2010

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

James Watson, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

McGRATH, J.

{¶1} Defendant-appellant, Lorenzo Angus ("appellant"), appeals from the judgment of the Franklin County Court of Common Pleas convicting him of one count of aggravated robbery entered upon his plea of guilty to the same.

{¶2} On May 22, 2009, appellant was indicted by a Franklin County Grand Jury for one count of aggravated robbery, one count of robbery, and one count of felonious assault. On August 17, 2009, appellant, represented by counsel, entered a plea of guilty to one count of aggravated robbery, a first-degree felony, in violation of R.C. 2911.01.

The trial court ordered a pre-sentence investigation ("PSI"), and scheduled the matter for sentencing. A sentencing hearing was held on November 6, 2009, and the trial court imposed a five-year term of incarceration and awarded 175 days of jail-time credit.

{¶3} However, on October 2, 2009, appellant's current counsel entered an appearance and filed a motion to withdraw guilty plea. The basis for the motion was that appellant is learning disabled, barely literate, and did not understand the plea proceedings. The trial court denied the motion noting that at the time he entered the plea, appellant was represented by experienced defense counsel and that neither appellant nor his counsel expressed concern about the plea. Additionally, the trial court noted it accepted the guilty plea only after carefully reviewing appellant's rights and being satisfied appellant understood what was occurring.

{¶4} This appeal followed, and appellant brings the following assignment of error for our review:

THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING THE DEFENDANT-APPELLANT A RIGHT TO WITHDRAW HIS PLEA OF GUILTY WHEN SERIOUS QUESTIONS WERE PRESENT AS TO DEFENDANT-APPELLANT'S MENTAL COMPETENCY TO RELINQUISH HIS CONSTITUTIONAL RIGHTS AT TRIAL.

{¶5} In his single assignment of error, appellant contends he was not competent to enter the plea because he was unable to understand the proceedings, and, therefore, the trial court erred in denying his motion to withdraw guilty plea. Crim.R. 32.1 provides:

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.

{¶6} Appellant filed a motion to withdraw his guilty plea after entering the plea and prior to sentencing. We recognize that a pre-sentence motion to withdraw a guilty plea should be freely and liberally granted. *State v. Xie* (1992), 62 Ohio St.3d 521, 527. However, "[a] defendant does not have an absolute right to withdraw a guilty plea prior to sentencing." *Id.* at syllabus, paragraph one.

{¶7} Crim.R. 32.1 provides no guidelines for a trial court to use when ruling on a pre-sentence motion to withdraw a guilty plea, and it is well-settled that the decision to grant or deny a pre-sentence motion to withdraw a guilty plea is within the sound discretion of the trial court. *Xie*, at syllabus, paragraph two. Therefore, absent an abuse of discretion, a trial court's decision to grant or deny a pre-sentence motion to withdraw a guilty plea must be affirmed. *Id.* at 527. For an abuse of discretion to lie, a reviewing court must find that a trial court's ruling was " 'unreasonable, arbitrary or unconscionable.' " *State v. Vasquez*, 10th Dist. No. 05AP-705, 2006-Ohio-4074, ¶6, quoting *Xie* at 527, quoting *State v. Adams* (1980), 62 Ohio St.2d 151, 157. See also *State v. Tyler*, 10th Dist. No. 01AP-1055, 2002-Ohio-4300, appeal not allowed, 97 Ohio St.3d 1485, 2002-Ohio-6866 (observing that an abuse of discretion is not merely poor judgment, but perversity of will, passion, prejudice, partiality, or moral delinquency).

{¶8} In *State v. Boyd* (Oct. 22, 1998), 10th Dist. No. 97AP-1640, appeal not allowed (1999), 85 Ohio St.3d 1424, this court outlined a non-exhaustive list of factors that a trial court may consider when determining whether to grant or deny a motion to withdraw a guilty plea prior to sentencing. According to *Boyd*, a trial court may consider:

- 1) whether the accused was represented by highly competent counsel;
- 2) whether the accused was given a full Crim.R. 11 hearing before entering the plea;
- 3) whether a full hearing was

held on the motion; 4) whether full and fair consideration was given the motion by the trial court; 5) whether the motion was made within a reasonable time; 6) whether the motion set forth specific reasons for withdrawal; 7) whether the accused understood the nature of the charges and possible penalties; and 8) whether the accused might have a complete defense to the charge or charges.

{¶9} Finding that Ohio and federal law were comparable on this issue, this court, in *Boyd*, remarked:

In *United States v. Spencer* (C.A.6, 1987), 836 F.2d 236, the court suggested several factors to be considered in determining whether to grant a pre-sentence motion to withdraw a guilty plea, including: 1) the length of time between the entry of the guilty plea and the filing of the motion to withdraw; 2) why the grounds for withdrawal were not presented to the court at an earlier point in the proceedings; 3) whether the defendant has asserted and maintained his innocence, the circumstances underlying the entry of the guilty plea; 4) the nature and background of the defendant; 5) whether the defendant has admitted guilt; and 6) whether the prosecution will be prejudiced as a result of plea withdrawal.

{¶10} Upon review, we find that appellant has failed to file a transcript of either the plea or sentencing proceedings. Because appellant's appeal challenges the trial court's taking of his plea, a transcript of the proceedings is necessary for a thorough review of appellant's contentions. Without a complete record, this court must presume the regularity of the proceedings and the validity of the judgment and affirm. *State v. Ransom* (Aug. 12, 1999), 10th Dist. No. 98AP-1613, citing *State v. Lake* (Mar. 28, 1996), 10th Dist. No. 85APA07-847 (presuming regularity of the proceedings and affirming the denial of a motion to withdraw guilty plea where the appellant failed to file a transcript of the same). See also *State v. Woody*, 8th Dist. No. 92929, 2010-Ohio-72 (appellant failed to file a transcript of plea proceedings; therefore, it was impossible for the appellate court to

review the Crim.R. 11 plea colloquy and the denial of a motion to withdraw guilty plea was affirmed); *State v. Glenn*, 11th Dist. No. 2003-L-022, 2004-Ohio-2917 (because the defendant failed to submit a transcript of the plea proceedings, it was assumed the trial court made certain the defendant understood the nature and consequences of the plea and that the plea was voluntary); *State v. Boylen*, 5th Dist. No. 2006 CA 00125, 2006-Ohio-5685; *State v. Kerby*, 2d Dist. No. 09-CA-39, 2010-Ohio-562; *State v. Smith*, 11th Dist. No. 2007-T-0076, 2008-Ohio-1501.

{¶11} Under the circumstances, a transcript of the proceedings is necessary for a complete review of the error assigned in appellant's brief. As appellant has failed to provide this court with a transcript, we must presume regularity of the proceedings below, including that the trial court made certain appellant understood the nature and consequences of the plea and that the plea was voluntary. Accordingly, we overrule appellant's single assignment of error.

{¶12} Having overruled appellant's single assignment of error, the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

FRENCH, J., concurs.
KLATT, J., concurs separately.

KLATT, J., concurring separately.

{¶13} I agree with the rationale set forth in the majority opinion. In addition, I note that the only reason cited by appellant in support of his motion to withdraw guilty plea was his one sentence assertion that he "is learning disabled and barely literate and he did not understand the proceedings." This bare assertion is without explanation or elaboration

and is unsupported by affidavit or reference to anything else in the record. Given the lack of support for the motion, the trial court did not abuse its discretion when it denied the motion. Therefore, I would affirm the trial court's decision for this additional reason.
