

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2010-06-050
- vs -	:	<u>OPINION</u> 4/18/2011
LINDSEY M. WILLIAMS,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 07CR23884

David P. Fornshell, Warren County Prosecuting Attorney, Michael Greer, 500 Justice Drive, Lebanon, Ohio 45036, for plaintiff-appellee

George A. Katchmer, 108 Dayton Street, Suite D, Yellow Springs, Ohio 45387, for defendant-appellant

BRESSLER, J.

{¶1} Defendant-appellant, Lindsey M. Williams, appeals the decision of the Warren County Court of Common Pleas, denying his motion to withdraw his guilty plea.

{¶2} Appellant pled guilty and was sentenced in November 2007 on numerous criminal offenses related to an incident involving a police stand-off, in which more than 100 rounds were reportedly fired by appellant, followed by a police chase. Appellant filed a direct appeal and this court affirmed his convictions and sentence in *State v. Williams*,

Warren App. No. CA2007-12-136, 2009-Ohio-435 (*Williams I*). Appellant subsequently filed a Crim.R. 32.1 post-sentence motion to withdraw his guilty plea, alleging that, due to the ineffective assistance of trial counsel, his plea was not knowingly, intelligently and voluntarily given. The trial court denied his motion, and on appeal, this court affirmed the trial court's decision in *State v. Williams*, Warren App. No. CA2009-03-032, 2009-Ohio-6240 (*Williams II*). Appellant appealed this court's decision on February 4, 2010, but the Ohio Supreme Court declined jurisdiction to hear the appeal on June 23, 2010.

{¶3} On March 1, 2010, while his appeal to the Ohio Supreme Court was still pending, appellant filed an App.R. 26(B) application to reopen his appeal, which this court denied on November 3, 2010 after appellant's appeal to the Ohio Supreme Court was no longer pending. In the meantime, on March 11, 2010, the state filed a motion in the trial court to resentence appellant. Before appellant could be resented by the trial court, appellant filed a second motion to withdraw his guilty plea on March 31, 2010. After holding an evidentiary hearing on appellant's motion, the trial court denied the motion on May 4, 2010. Appellant filed his notice of appeal of the trial court's decision denying his second motion to withdraw his guilty plea, which is the subject of this appeal, on June 3, 2010. Subsequently, the trial court held a resentencing hearing on July 2, 2010 and filed a resentencing judgment entry on July 13, 2010.

{¶4} In this appeal, appellant raises two assignments of error.

{¶5} Assignment of Error No. 1:

{¶6} "A TRIAL COURT CANNOT ENTERTAIN A CRIM.R. 32.1 MOTION OR A MOTION TO RE-SENTENCE WHILE AN APPEAL IS PENDING IN FRONT OF THE STATE SUPREME COURT."

{¶7} Assignment of Error No. 2:

{¶8} "A PRE-SENTENCE MOTION TO WITHDRAW PLEA [sic] MUST BE FREELY

AND LIBERALLY GRANTED AND A PLEA THAT AS NOT KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY GIVEN MUST BE VACATED."

{¶9} In this appeal, appellant argues that the trial court lacked jurisdiction to consider his second motion to withdraw his guilty plea because his appeal to the Ohio Supreme Court was still pending at the time the trial court overruled that motion. The state agrees with this portion of appellant's argument. However, appellant also argues that this matter should be remanded for resentencing and for the trial court to reconsider his second motion to withdraw his guilty plea.

{¶10} 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."

{¶11} A trial court's decision regarding a post-sentence motion to withdraw a guilty plea is reviewed on appeal under an abuse of discretion standard. *State v. Rose*, Butler App. No. CA2010-03-059, 2010-Ohio-5669, ¶15; *Williams II*, 2009-Ohio-6240 at ¶13. An abuse of discretion implies that the court's decision was unreasonable, arbitrary, or unconscionable, and not merely an error of law or judgment. *Id.*; *State v. Pointer*, Fayette App. No. CA2010-03-003, 2010-Ohio-5067, ¶9. When applying the abuse of discretion standard, an appellate court may not substitute its judgment for that of the trial court. *Id.*

{¶12} Although a trial court is permitted to consider a post-sentence motion to withdraw a guilty plea, the court lacks jurisdiction to consider such a motion once a higher court has affirmed the trial court's judgment on appeal. *Id.*; *State v. Allen*, Warren App. No. CA2006-01-001, 2006-Ohio-5990, ¶12. Crim.R. 32.1 "does not confer upon the trial court the power to vacate a judgment which has been affirmed by the appellate court, for this action would affect the decision of the reviewing court, which is not within the power of the

trial court to do." *Id.*, quoting *State ex rel. Special Prosecutors v. Judges, Court of Common Pleas* (1978), 55 Ohio St.2d 94, 98. See, also, *State v. Ketterer*, 126 Ohio St.3d 448, 2010-Ohio-3831, ¶61.

{¶13} Because this court affirmed appellant's conviction and sentence in *Williams I*, the trial court was without jurisdiction to decide appellant's motion to withdraw his plea. Accordingly, the trial court abused its discretion in ruling on appellant's motion. However, the trial court's error is harmless, as the trial court should have simply dismissed appellant's motion rather than overruling it.

{¶14} In addition, appellant is misguided in his assertion that the trial court regained jurisdiction to entertain such a motion once the Ohio Supreme Court denied jurisdiction to hear his appeal of this court's decision. A trial court loses jurisdiction to decide such a motion once an appeal is taken, "and, absent a remand, it does not regain jurisdiction subsequent to the Court of Appeals' decision." *Special Prosecutors*, 55 Ohio St.2d at 97.

{¶15} Because the trial court did not have jurisdiction to decide the motion that is the subject of this appeal, the trial court's judgment is null and void. "The effect of determining that a judgment is void is well established. It is as though such proceedings had never occurred; the judgment is a mere nullity and the parties are in the same position as if there had been no judgment." *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, ¶12, quoting *Romito v. Maxwell* (1967), 10 Ohio St.2d 266, 267-268. As this court does not have jurisdiction to review void orders, we are unable to reach the merits of appellant's arguments on appeal. See *Lyttle v. State*, Butler App. No. CA2010-04-089, 2010-Ohio-6277, ¶17.

{¶16} This appeal is dismissed.

HENDRICKSON, P.J., and RINGLAND, J., concur.

[Cite as *State v. Williams*, 2011-Ohio-1875.]