

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

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2014-07-014
- vs -	:	<u>OPINION</u>
	:	4/27/2015
ROY LEE FERRELL II,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM MADISON COUNTY COURT OF COMMON PLEAS
Case No. CR20130145

Stephen J. Pronai, Madison County Prosecuting Attorney, Rachel M. Price, 59 North Main Street, London, Ohio 43140, for plaintiff-appellee

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PIPER, P.J.

{¶ 1} Defendant-appellant, Roy Ferrell, appeals a decision of the Madison County Court of Common Pleas denying his request to withdraw his guilty plea.

{¶ 2} Ferrell was charged with three counts of unlawful sexual conduct with a minor after police were informed that Ferrell, who was 28 at the time, had an ongoing sexual relationship with a 15-year-old girl. Although Ferrell did not deny the sexual relationship,

apologized to the girl's family for his actions, and indicated multiple times that he planned on resuming the relationship with the girl once she turned 16, Ferrell pled not guilty to the charges.

{¶ 3} Subsequent to his plea, Ferrell moved the court to order an evaluation of his mental condition, and requested funding to obtain his medical records from hospitals in Wisconsin where he had previously lived and received treatment. Ferrell also changed his plea to not guilty by reason of insanity. The trial court granted the motion to pay for the cost of obtaining the medical records, and at least one hospital provided records indicating that Ferrell was narcissistic and had attempted suicide.

{¶ 4} The trial court held a hearing on Ferrell's motion for an evaluation and was informed of the hospital records regarding Ferrell's suicide attempt and narcissism. The trial court then spoke with Ferrell and determined that Ferrell understood the roles of the parties and was in a position to assist his counsel in presenting a defense. The trial court also noted that Ferrell understood right from wrong at the time of his alleged crimes, and further, that the not guilty by reason of insanity plea was invalid because it was not timely made. The trial court then denied Ferrell's motion for a psychiatric evaluation.

{¶ 5} After the trial court denied the request for an evaluation, Ferrell entered into plea negotiations with the state. Ferrell agreed to plead guilty to two of the counts, and the state agreed to nolle the remaining count and suggest that the trial court order a presentence investigation report prior to sentencing.

{¶ 6} The trial court held a plea hearing, during which Ferrell indicated that he understood the nature of his plea, and the consequences of pleading guilty. The trial court accepted Ferrell's plea as knowingly, intelligently, and voluntarily made. The trial court ordered a presentence investigation, and set a hearing date for sentencing. The day sentencing was to occur, new counsel entered an appearance on behalf of Ferrell and filed

motions to withdraw the guilty plea and for a psychological evaluation. Ferrell also moved to continue sentencing.

{¶ 7} The trial court ordered a hearing on Ferrell's motion to withdraw his guilty plea. During the hearing, Ferrell testified that he had only been counseled by his prior attorney for ten minutes before the plea hearing, and had only answered yes to the trial court's questions during the plea colloquy in an attempt to secure more time to hire a different attorney. The trial court denied Ferrell's motion to withdraw his guilty plea, and proceeded with sentencing. The trial court sentenced Ferrell to two years in prison, and classified Ferrell a Tier II sexual offender. Ferrell now appeals the trial court's decision denying his motion to withdraw his guilty plea, raising the following assignment of error.

{¶ 8} THE COURT ERRED BY DENYING THE DEFENDANT'S MOTION TO WITHDRAW HIS GUILTY PLEA.

{¶ 9} Ferrell argues that the trial court erred in denying his request to withdraw his guilty plea.

{¶ 10} "[A] presentence motion to withdraw a guilty plea should be freely and liberally granted." *State v. Xie*, 62 Ohio St.3d 521, 527 (1992). Even so, a "defendant does not have an absolute right to withdraw a plea prior to sentencing." *Id.* Instead, the trial court must conduct a hearing on the motion "to determine whether there is a reasonable and legitimate basis for the withdrawal of the plea." *Id.* A reviewing court defers to the judgment of the trial court on these issues, because "the good faith, credibility and weight of the movant's assertions in support of the motion are matters to be resolved by that court." *Id.* at 525.

{¶ 11} A trial court's decision regarding a defendant's motion to withdraw a plea will only be reversed upon an abuse of the trial court's discretion. *State v. Burns*, 12th Dist. Butler Nos. CA2004-07-084, CA2004-10-126, 2005-Ohio-5290, ¶ 12. A trial court is free to believe or disbelieve a defendant's allegations asserted in support of the motion to withdraw

a presentence plea, and our review of the trial court's decision will look to the record as a whole. *State v. Childs*, 12th Dist. Butler No. CA2009-03-076, 2010-Ohio-1814. A trial court does not abuse its discretion unless its ruling is unreasonable, arbitrary or unconscionable. *Burns* at ¶ 12.

{¶ 12} After reviewing the record, we find that the trial court did not abuse its discretion in denying Ferrell's motion to withdraw his guilty plea, as Ferrell did not demonstrate a reasonable and legitimate basis for withdrawal. The record indicates that during the plea hearing, the trial court performed a proper Crim.R. 11 colloquy and advised Ferrell of all constitutional and nonconstitutional rights he was waiving by entering a plea. Although Ferrell raises no challenge to the way in which the trial court performed the plea hearing colloquy, he argues that the trial court should have permitted withdrawal of his plea because "he was given insufficient time to digest the magnitude of the rights he was waiving, as he did not fully understand that waiver until the plea form had already been executed and the Court was in the process of accepting that written plea."

{¶ 13} In support of his argument, Ferrell asserts that his responses during the trial court's plea colloquy demonstrate that he did not understand the impact of his plea. Several times during the colloquy, the trial court would ask Ferrell whether he understood an aspect of the plea process and Ferrell would respond, "I do now." For example, during the plea colloquy, the trial court asked Ferrell, "And the consequence of a guilty plea is the Court may proceed to sentencing. Do you understand that?" Ferrell responded, "I do now." The trial court later explained postrelease control and asked Ferrell whether he understood the ramifications of postrelease control, and Ferrell responded, "I do now." The trial court then explained more details regarding postrelease control and asked whether Ferrell understood that if he commits a crime while on postrelease control, he could be subject to additional prison time. Ferrell again responded, "I do now." Ferrell also responded, "I do now" when

asked whether he understood that he had a right to remain silent if he decided to have a jury trial.

{¶ 14} While Ferrell argues that his answers of "I do now" indicate that he did not actually understand the rights he was waiving or the consequences of his plea, we disagree. A complete review of the plea hearing and the hearing on Ferrell's motion to withdraw his plea demonstrate that Ferrell was well-informed of the consequences of pleading guilty, and that his plea was made knowingly, intelligently, and voluntarily.

{¶ 15} The trial court opened the plea hearing and discussed the negotiated plea with Ferrell. The trial court made reference to the agreement wherein the state would nolle one of the three counts and suggest a presentence investigation report in return for Ferrell pleading guilty to two counts of unlawful sexual conduct with a minor. The court asked Ferrell whether he had read the plea form, and Ferrell indicated that his counsel had explained the plea form to him. Ferrell then stated that his counsel had "basically read it over and translated it to layman's terms for better understanding." Ferrell's counsel also confirmed that he gone through the plea form, "giving [Ferrell] what each matter, each paragraph, represented."

{¶ 16} The court then asked Ferrell whether he was satisfied with his counsel's representation and Ferrell indicated that he was and was not satisfied. When asked to explain further, Ferrell indicated that his attorney should have moved the court more strenuously for a psychiatric evaluation in order to show incompetency/insanity. However, the trial court stated that Ferrell's motions had been overruled, and that counsel could not have done more in that regard. The trial court then asked whether Ferrell had any other reason for not being satisfied with his counsel's representation, and suggested holding a jury trial in lieu of the plea. After the trial court suggested a jury trial, Ferrell did not indicate any other reason for his dissatisfaction with counsel, stated that he did not want to have a jury trial, and indicated that he would rather proceed with the plea and presentence investigation

process. The trial court then asked Ferrell whether he was satisfied with his counsel's performance and Ferrell responded, "Yeah."

{¶ 17} The trial court then proceeded with the plea colloquy and asked whether Ferrell understood that a guilty plea is a complete and total admission of the crime with which he was charged, and Ferrell responded, "yeah." The trial court then asked whether Ferrell understood that the court could proceed with sentencing, and as referenced above, Ferrell stated, "I do now." However, the trial court immediately followed Ferrell's response with another question. "Well, I'm telling you, the consequence of a guilty plea is the Court may proceed to sentencing. You understand that, correct?" Ferrell answered, "Yeah." The court then asked Ferrell whether he understood the charge and possible sentence, and Ferrell responded, "Yes." The trial court then asked whether Ferrell understood the maximum sentence, and Ferrell responded, "Yes, sir." The trial court asked Ferrell whether he understood the sexual offender classifications and that he would be classified as a Tier II sex offender. Ferrell responded, "Yes, sir." Ferrell also responded that he understood that the court had discretion when imposing the sentence, and that Ferrell had to abide by the terms of his postrelease control. Ferrell also indicated that he understood the right to a jury trial, that the state had the burden of proof, that he had the right to representation, and that he had the right to cross-examine witnesses. Ferrell also indicated that he understood his right to subpoena witnesses on his behalf and that by pleading guilty, he was giving up those rights. Moreover, when asked whether he was pleading guilty to the two counts, Ferrell responded, "Yeah."

{¶ 18} While Ferrell answered "I do now" to four of the trial court's questions, all of the other answers were either "yes" or "yeah," and at no time did Ferrell indicate his lack of understanding regarding the trial court's questions. Ferrell never suggested that his answer of "I do now" was indicative of his not understanding the ramification of his plea or that his

choice of words somehow indicated that he was only just realizing what his plea meant.

{¶ 19} Nor did Ferrell's choice of words indicate that he had not been fully counseled by his attorney before pleading guilty. This is especially true where the record indicates that Ferrell's counsel explained the plea in detail before the hearing, complete with a section by section explanation of the written plea form. Moreover, during the plea hearing itself, Ferrell never disputed his counsel's statement that he had gone through the plea form, "giving [Ferrell] what each matter, each paragraph, represented." At no time prior to the hearing on his motion to withdraw the guilty plea did Ferrell suggest that he was not fully counseled regarding the plea.

{¶ 20} During the hearing on his motion to withdraw the guilty plea, Ferrell testified for the first time that his attorney had not gone over the plea form with him, and had only told him approximately ten minutes before the plea hearing to sign the plea form so that Ferrell could get a "better deal." Ferrell testified that his counsel had not explained anything to him regarding the plea, and that the only reason he answered yes to all of the trial court's questions during the plea colloquy was to "buy more time * * * to possibly get a better attorney." However, on cross-examination, Ferrell admitted that his prior counsel had "translated into layman's terms" the written plea agreement form and that his counsel had "read the terms of the waiver" to him. Ferrell also admitted that he had never once indicated that he was going through the plea process solely to garner more time to find a different attorney. The record simply does not support Ferrell's contentions that he offered a reasonable and legitimate basis for withdrawal.

{¶ 21} Ferrell does not assert that the plea colloquy was deficient, or that his counsel was ineffective in representing him at the time of his plea. Ferrell's only basis for withdrawing his plea was that he did not understand his plea and only went through the process to secure more time to obtain a different attorney. However, the record indicates that Ferrell

understood the nature and consequences of his plea, and that such plea was made knowingly, intelligently, and voluntarily. Ferrell's indications that he made misrepresentations to the court at the plea hearing to secure time to obtain new counsel appear disingenuous in the context of the record and did not create the required reasonable and legitimate basis for withdrawal. The trial court did not abuse its discretion in denying Ferrell's motion to withdraw his plea, as the record amply supports its decision. Ferrell's single assignment of error is therefore overruled.

{¶ 22} Judgment affirmed.

HENDRICKSON and M. POWELL, JJ., concur.