

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

STATE OF OHIO,	:	CASE NO. CA2020-03-004
Appellee,	:	<u>OPINION</u>
	:	12/28/2020
- vs -	:	
	:	
JEFFREY WILLIS GUY,	:	
Appellant.	:	

CRIMINAL APPEAL FROM PREBLE COUNTY COURT OF COMMON PLEAS
Case No. 17CR12521

Martin P. Votel, Preble County Prosecuting Attorney, 101 East Main Street, Courthouse,
1st Floor, Eaton, Ohio 45320, for appellee

James P. Vanzant, P.O. Box 161, Eaton, Ohio 45320, for appellant

M. POWELL, P.J.

{¶ 1} Appellant, Jeffrey Willis Guy, appeals from a decision of the Preble County Court of Common Pleas denying his presentence motion to withdraw his guilty plea. For the reasons discussed below, we affirm the judgment of the trial court.

{¶ 2} In early November 2017, appellant led police on a multi-agency, multi-state motor vehicle chase. Appellant was arrested and held in jail awaiting trial in Indiana. In

December 2017, the Preble County Grand Jury indicted appellant on one count of failure to comply with an order or signal of a police officer, a third-degree felony in violation of R.C. 2921.331(B) and (C)(5)(a)(ii). By the time charges had been filed in Ohio, appellant had bonded out of local custody in Indiana. Appellant remained "at large" for nearly a year before he was again arrested and arraigned in Preble County in November 2018.

{¶ 3} In April 2019, appellant appeared before the trial court and entered a guilty plea to the offense as charged. The trial court released appellant upon a personal recognizance bond and scheduled his sentencing hearing to occur in May 2019. Subject to a detainer from Indiana, appellant was transferred into the custody of Indiana authorities. Appellant subsequently failed to appear for his Preble County sentencing hearing because he was incarcerated in Indiana. The trial court issued a *capias* order to have appellant returned to Preble County. However, appellant was not returned to Preble County pursuant to the *capias*.

{¶ 4} In September 2019, upon appellant's motion, the trial court issued an order for appellant to be conveyed from Indiana to Preble County for sentencing. The Indiana authorities refused to honor the order to convey appellant. Appellant was finally returned to Preble County in early January 2020 after the completion of his Indiana sentence. The trial court set a date for appellant's sentencing hearing later that month.

{¶ 5} On January 16, 2020, prior to the sentencing hearing, appellant filed a motion to withdraw his guilty plea. In his motion, appellant indicated that he entered his guilty plea with the hope that his Ohio and Indiana sentences could be served concurrently which was no longer possible since he had completed his Indiana sentence. However, appellant also acknowledged that the state intended to recommend a consecutive sentence. In opposing appellant's motion to withdraw the plea, the state demonstrated that as early as April 2019 it had recommended that the trial court impose the Ohio sentence consecutively to the

Indiana sentence.

{¶ 6} The trial court conducted a hearing on appellant's motion to withdraw his plea on February 5, 2020. After considering the matter, the trial court denied appellant's motion. The matter proceeded to sentencing, where the trial court sentenced appellant to a 24-month prison term with credit for 220 days; postrelease control; and a driver's license suspension.

{¶ 7} Appellant now appeals raising one assignment of error for review:

{¶ 8} THE TRIAL COURT, IN DENYING APPELLANT'S MOTION TO WITHDRAW HIS GUILTY PLEA PRIOR TO SENTENCING, ABUSED ITS DISCRETION AND PREJUDICED APPELLANT'S RIGHT TO HAVE HIS GUILT OR INNOCENCE DETERMINED BY A TRIAL.

{¶ 9} In his sole assignment of error, appellant argues that the trial court abused its discretion by denying his motion to withdraw his guilty plea because he provided a specific reason for withdrawing his guilty plea – that he could no longer request the Ohio sentence run concurrently with any Indiana sentence – and that any prejudice to the state, if the trial court granted the motion, would have been minimal.

{¶ 10} A defendant does not have the absolute right to withdraw a guilty plea prior to sentencing. *State v. Manis*, 12th Dist. Butler No. CA2011-03-059, 2012-Ohio-3753, ¶ 24, citing *State v. Xie*, 62 Ohio St.3d 521, 527 (1992). Nevertheless, the trial court must conduct a hearing to determine whether the defendant has a reasonable and legitimate basis for withdrawing the plea. *Xie* at paragraph one of the syllabus.

{¶ 11} An appellate court reviews the decision to grant or deny a motion to withdraw the plea for an abuse of discretion. *State v. Harris*, 12th Dist. Butler No. CA2018-04-076, 2019-Ohio-1700, ¶ 10. To find an abuse of discretion the ruling must be unreasonable, arbitrary, or unconscionable. *State v. Burns*, 12th Dist. Warren Nos. CA2004-07-084 and

CA2004-10-126, 2005-Ohio-5290, ¶ 12. In reviewing the denial of a presentence motion to withdraw a guilty plea, an appellate court will consider nine factors:

- (1) whether the motion was made within a reasonable time,
- (2) whether the motion set out specific reasons for the withdrawal,
- (3) whether the trial court conducted a full and impartial hearing on the motion to withdraw the plea,
- (4) whether the trial court gave full and fair consideration to the motion,
- (5) whether the defendant was represented by highly competent counsel,
- (6) whether the defendant was afforded a complete Crim.R. 11 hearing before entering the plea,
- (7) whether the defendant understood the nature of the charges and the possible penalties,
- (8) whether the defendant was possibly not guilty of the charges or had a complete defense to the charges, and
- (9) whether the state would have been prejudiced by the withdrawal.

See e.g. *State v. Chisenhall*, 12th Dist. Clermont Nos. CA2015-07-055 and CA2015-07-063, 2016-Ohio-999, ¶ 12; *State v. Daly*, 12th Dist. Clermont No. CA2015-06-054, 2015-Ohio-5034, ¶ 12. No single factor is conclusive, instead the reviewing court must apply a balancing test to the factors. *State v. Newton*, 12th Dist. Preble No. CA2014-10-011, 2015-Ohio-2319, ¶ 12. A mere "change of heart" is insufficient justification to withdraw a guilty plea. *State v. Quinn*, 12th Dist. Butler No. CA2006-03-049, 2007-Ohio-1363, ¶ 12. A defendant should not be allowed to withdraw his plea because he realizes an unexpected sentence may be imposed. *State v. Wofford*, 12th Dist. Butler No. CA2014-10-210, 2015-Ohio-3708, ¶ 11.

{¶ 12} After review of the record, we find that the trial court did not abuse its

discretion denying appellant's motion to withdraw his guilty plea. None of the substantive factors weigh in favor of granting the motion to withdraw the guilty plea. While appellant's filing of the motion may be considered timely and supported with a specific reason, these factors are simply threshold requirements. Those threshold requirements having been satisfied, the trial court proceeded to conduct a full and impartial hearing on appellant's motion to withdraw his guilty plea. The journal entry denying the motion demonstrates that the trial court gave full and fair consideration to appellant.

{¶ 13} Turning to the remaining factors, the trial court provided appellant a change of plea hearing during which it scrupulously complied with Crim. R. 11 before accepting appellant's guilty plea. At the plea hearing, appellant indicated that he understood the nature of the charge, the rights he was waiving by entering the guilty plea, and the penalties that could be imposed on him for the conviction. He further admitted that no promises had been made to induce his plea. Appellant was represented by competent counsel throughout this stage of the proceeding and appellant does not contend otherwise. Consequently, these factors do not weigh in favor of appellant.

{¶ 14} In the entry denying the motion to withdraw the guilty plea, the trial court found that appellant did not assert a claim that he was not guilty of the offense. The trial court noted appellant's acknowledgment that neither the trial court nor the state made any commitment of a concurrent sentence in consideration of his guilty plea.

{¶ 15} The trial court found that appellant's motion to withdraw his plea was premised on a change of heart. We agree. Appellant's motion to withdraw his guilty plea was premised only upon his hope that he could serve his Ohio and Indiana sentences concurrently without any basis to expect that his hope would be realized. Appellant's disappointment at the sentence that could be imposed upon him may not serve as a basis for withdrawal of his guilty plea. "A defendant who 'has a change of heart regarding his

guilty plea should not be allowed to withdraw that plea just because he realizes that an unexpected sentence may be imposed." *Wofford*, 2015-Ohio-3708 at ¶ 11, quoting *State v. Dafforn*, 12th Dist. Clermont No. CA2006-03-023, 2006-Ohio-7035, ¶ 13.

{¶ 16} Appellant relies upon *State v. Warren*, 1st Dist. No. C-180008, 2018-Ohio-4757, to argue that he had a "substantial right" to request concurrent sentences. We find *Warren* distinguishable on the facts. In *Warren*, the First District Court of Appeals held that the relevant sentencing statutes, R.C. 2929.14(C) and 2929.41(B)(2), do not require an Ohio felony prison sentence to run consecutively to a felony prison sentence in a foreign jurisdiction. *Id.* at ¶ 20. Therefore, the *Warren* court determined that "the trial court imposed the consecutive sentence under the erroneous understanding that it was required under the provisions of R.C. 2929.14(C)" and reversed the trial court's judgment imposing a consecutive sentence. *Id.* In the cause sub judice, the trial court did not sentence appellant under a misapprehension that the Ohio and Indiana sentences must be served consecutively. Consequently, the circumstances of this case are significantly different from *Warren* and we find appellant's argument inapposite.

{¶ 17} Finally, even if we accept appellant's argument that the state would not suffer prejudice by the withdrawal, this factor is not a tipping point rendering the trial court's denial of appellant's motion to withdraw his guilty plea an abuse of discretion. As indicated above, none of the *Chisenhall* factors is conclusive and each must be given such weight as the facts of a particular case dictate.

{¶ 18} In light of the foregoing, the trial court did not abuse its discretion denying appellant's motion to withdraw his guilty plea. There was no reasonable and legitimate basis to withdraw the plea.

{¶ 19} Judgment affirmed.

RINGLAND and PIPER, JJ., concur.