

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

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : CASE NO. CA2011-02-020
 :
 - vs - : OPINION
 : 1/17/2012
 :
 THOMAS W. JOYCE, :
 :
 Defendant-Appellant. :

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2009-06-0940

Michael T. Gmoser, Butler County Prosecuting Attorney, Donald R. Caster, Government Services Center, 315 High Street, 11th Floor, Hamilton, Ohio 45011, for plaintiff-appellee

Gerald M. Wirsch, 26 South Third Street, Hamilton, Ohio 45011, for defendant-appellant

RINGLAND, J.

{¶1} Defendant-appellant, Thomas W. Joyce, appeals from the Butler County Court of Common Pleas decisions denying his March 30, 2010 and June 29, 2010 motions to withdraw his guilty plea. For the reasons outlined below, we affirm.

{¶2} On June 10, 2009, the Butler County Grand Jury returned a 19-count indictment against appellant resulting from his role in the armed robbery of two local Walgreens Pharmacy stores. On September 25, 2009, after entering into plea negotiations, appellant

pled guilty to 17 of the 19 charges and was subsequently sentenced to serve a total of 42 years in prison. On December 18, 2009, the trial court filed its judgment entry of conviction from which appellant filed a timely notice of appeal arguing that the trial court erred in its sentencing decision.

{¶3} On March 30, 2010, while his appeal was pending in this court, appellant, acting pro se, filed a motion to withdraw his guilty plea. In support of this motion, appellant claimed that vacating his plea would prevent manifest injustice brought on by his trial counsel's faulty and coercive representation that led him to believe he would receive only a "Ten to Fifteen (10-15) years [sic] sentence for his alleged offenses." The trial court denied appellant's motion to withdraw his guilty plea in an entry filed April 30, 2010. Appellant did not appeal from this decision.

{¶4} On June 29, 2010, while his appeal was still pending in this court, appellant, once again acting pro se, filed another motion to withdraw his guilty plea. In support of this motion, appellant, in addition to reiterating his previous allegations regarding his trial counsel's faulty and coercive representation, argued that he was unable to understand the effect of his guilty plea because he was suffering from "extreme drug withdraw" during his plea colloquy. The trial court once again denied appellant's motion to withdraw his guilty plea in an entry filed July 20, 2010. Appellant did not appeal from this decision.

{¶5} On November 22, 2010, this court filed an accelerated calendar judgment entry reversing the trial court's sentencing decision and remanding the matter back for purposes of resentencing. See *State v. Joyce*, 12th Dist. App. Nos. CA2010-01-011 and CA2010-01-012 (Nov. 22, 2010) (accelerated judgment calendar entry). In so holding, this court found appellant's "convictions for possession of morphine must be merged into a single count of possession of morphine and appellant's five convictions for possession of oxycodone must be merged into a single count of possession of oxycodone." *Id.* at ¶2.

{¶6} On January 13, 2011, the trial court held a resentencing hearing in accordance with this court's mandate that ultimately resulted in appellant being resentenced to serve a total of 36 years in prison. Appellant then filed a notice of appeal on February 3, 2011.

{¶7} Appellant has raised two assignments of error for review. For ease of discussion, we will address appellant's assignments of error together.

{¶8} Assignment of Error No. 1:

{¶9} "THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT WHEN IT DENIED DEFENDANTS PRESENTENCE MOTION TO WITHDRAW HIS GUILTY PLEA."

{¶10} Assignment of Error No. 2:

{¶11} "THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT WHEN IT REFUSED TO ALLOW HIM TO WITHDRAW HIS PLEA OF GUILTY."

{¶12} In his two assignments of error, appellant argues that the trial court erred by denying his March 30, 2010 and June 29, 2010 motions to withdraw his guilty plea. However, disregarding any issues regarding the timeliness of his appeal, the record clearly indicates that appellant filed both of his motions to withdraw his guilty plea while his direct appeal was pending before this court. "It is well-settled that the filing of a notice of appeal divests the trial court of jurisdiction to consider a motion to withdraw a plea." *Mason v. Lawhorn*, 12th Dist. No. CA2006-05-060, 2007-Ohio-2289, ¶7; *State v. Dudas*, 11th Dist. Nos. 2006-L-267 and 2006-L-268, 2007-Ohio-6739, ¶99 (finding defendant divested trial court of jurisdiction to consider his motion to withdraw his guilty plea by filing a notice of appeal); *State v. Leach*, 8th Dist. No. 84794, 2005-Ohio-1870, ¶16-18 (finding trial court had no jurisdiction to rule on defendant's motion to withdraw guilty plea while direct appeal was pending). The trial court, therefore, had no jurisdiction to entertain either of appellant's motions to withdraw his guilty

plea and any such ruling rendered by the trial court on the motions was a nullity. See *Lawhorn* at ¶7; see also *State v. Williams*, 12th Dist. No. CA2010-06-050, 2011-Ohio-1875, ¶15; *State v. Richard*, 8th Dist. Nos. 76984 and 76985, 2000 WL 336508, *2 (Mar. 30, 2000). Accordingly, having found the trial court lacked jurisdiction to rule on both of appellant's motions to withdraw his guilty plea, and finding no error in the trial court's resentencing decision, appellant's two assignments of error are overruled.

{¶13} Judgment affirmed.

HENDRICKSON, P.J., and YOUNG, J., concur.

Young, J., retired, of the Twelfth Appellate District, sitting by assignment of the Chief Justice, pursuant to Section 6(C), Article IV of the Ohio Constitution.