

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-090648
	:	TRIAL NO. B-0604901
Plaintiff-Appellee,	:	
	:	<i>DECISION.</i>
vs.	:	
	:	
WILLIAM FIELDS,	:	
	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: September 3, 2010

*Joseph T. Deters*, Hamilton County Prosecuting Attorney, and *Philip R. Cummings*,  
Assistant Prosecuting Attorney, for Plaintiff-Appellee,

*Sarah E. Moorhouse*, for Defendant-Appellant.

Please note: This case has been removed from the accelerated calendar.

**DINKELACKER, Judge.**

{¶1} Defendant-appellant, William Fields, appeals from a decision of the Hamilton County Court of Common Pleas overruling his motion to withdraw his guilty pleas and resentencing him following a remand from this court. We find no merit in his three assignments of error, and we affirm the trial court’s judgment.

***I. Facts and Procedure***

{¶2} The record shows that Fields pleaded guilty to one count of possession of cocaine under R.C. 2925.11(A), with an accompanying firearm specification, and one count of having weapons while under a disability under R.C. 2923.13(A)(3). He was sentenced to two concurrent five-year prison terms. On direct appeal, this court affirmed those convictions.<sup>1</sup> We also rejected his arguments on appeal from the trial court’s denial of his petition for postconviction relief<sup>2</sup> and from his motion for a new trial or to withdraw his guilty pleas.<sup>3</sup>

{¶3} Subsequently, Fields filed a second petition for postconviction relief. He sought to withdraw his guilty pleas because the trial court had failed to inform him that he would be subject to a mandatory fine. The trial court denied the petition, and he appealed that denial to this court. We held, based on recent Ohio Supreme Court decisions, that his sentences were void for failure to include the statutorily mandated term of a mandatory fine.<sup>4</sup> Consequently, we vacated the sentences and remanded the case for a new sentencing hearing.<sup>5</sup>

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<sup>1</sup> *State v. Fields* (Oct. 24, 2007), 1st Dist. No. C-060944.

<sup>2</sup> *State v. Fields* (Mar. 5, 2008), 1st Dist. No. C-070268.

<sup>3</sup> *State v. Fields* (June 11, 2008), 1st Dist. No. C-070654.

<sup>4</sup> *State v. Fields*, 183 Ohio App.3d 647, 2009-Ohio-4187, 918 N.E.2d 204, ¶7-8.

<sup>5</sup> *Id.* at ¶10-11.

{¶4} Before the sentencing hearing, Fields again filed a motion to withdraw his pleas, in which he contended that his pleas were involuntary because the trial court had failed to inform him that he would be subject to a mandatory fine. The court denied the motion and again sentenced him to serve two concurrent five-year terms of imprisonment. Consistent with our decision, it also imposed a mandatory \$5,000 fine. This appeal followed.

## ***II. Voluntariness of Pleas***

{¶5} Fields presents three assignments of error for review. In his first assignment of error, he contends that his pleas were not knowingly, voluntarily, and intelligently made because the court failed to inform him about the mandatory fine. This assignment of error is not well taken.

{¶6} We first note that the state argues that since we determined in the first appeal that Fields's pleas were voluntary, the law-of-the-case doctrine applies. It provides that "a decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceedings in the case at both trial and reviewing court levels."<sup>6</sup> Thus, a trial court confronted with substantially the same facts and issues involved in a prior appeal is bound by the appellate court's determination of those issues.<sup>7</sup>

{¶7} But we held in the first appeal that Fields's original sentences were void, as if they had never existed. Therefore, we vacated the sentences and ordered the trial court to sentence him anew. A conviction consists of a finding of guilt and a sentence.<sup>8</sup> Without a valid sentence there was no conviction, so Fields could still

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<sup>6</sup> *Nolan v. Nolan* (1984), 11 Ohio St.3d 1, 3, 462 N.E.2d 410; *State v. Klein*, 1st Dist. No. C-080470, 2009-Ohio-2886, ¶18.

<sup>7</sup> *Klein*, supra, at ¶18.

<sup>8</sup> *State v. Henderson* (1979), 58 Ohio St.2d 171, 177-179, 389 N.E.2d 494; *State v. Obsaint*, 1st Dist. No. C-060629, 2007-Ohio-2661, ¶24.

challenge his pleas. Therefore, the issues and facts were not the same as those in the prior appeal, and the law-of-the-case doctrine does not apply or prevent this court from deciding whether Fields was entitled to have his pleas withdrawn.<sup>9</sup>

{¶8} We turn now to the merits of the assignment of error. Crim.R. 11(C) “was adopted \* \* \* to facilitate a more accurate determination of the voluntariness of a defendant’s plea by ensuring an adequate record for review.”<sup>10</sup> A trial court must strictly comply with the provisions of the rule relating to the constitutional rights that a defendant waives by entering a guilty plea.<sup>11</sup> A court must substantially comply with the other provisions of Crim.R. 11(C) relating to other notifications.<sup>12</sup>

{¶9} “Substantial compliance means that under the totality of the circumstances the defendant subjectively understands the implications of his plea and the rights he is waiving. \* \* \* Furthermore, a defendant who challenges his guilty plea on the basis that it was not knowingly, intelligently, and voluntarily made must show a prejudicial effect. \* \* \* The test is whether the plea would otherwise have been made.”<sup>13</sup>

{¶10} In this case, the trial court strictly complied with the provisions of Crim.R. 11(C) relating to the constitutional rights that Fields would be waiving and substantially complied in all other respects, including informing him about the maximum penalty he could have received. It conducted a meaningful dialogue to ensure that Fields’s pleas were made knowingly, intelligently, and voluntarily.<sup>14</sup> Thus, the record does not demonstrate that absent the court’s failure to inform him

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<sup>9</sup> *Klein*, supra, at ¶19.

<sup>10</sup> *State v. Nero* (1990), 56 Ohio St.3d 106, 107, 564 N.E.2d 474.

<sup>11</sup> *State v. Ballard* (1981), 66 Ohio St.2d 473, 476-478, 423 N.E.2d 115; *State v. Simmons*, 1st Dist. No. C-050817, 2006-Ohio-5760, ¶11.

<sup>12</sup> *Ballard*, supra, at 475-476; *Simmons*, supra, at ¶11.

<sup>13</sup> *Nero*, supra, at 108 (citations omitted).

<sup>14</sup> See *Simmons*, supra, at ¶18.

about the mandatory fine, the guilty pleas would not have been made. Consequently, we overrule Fields's first assignment of error.

**III. Fields's Motion to Withdraw his Pleas**

{¶11} In his second assignment of error, Fields contends that the trial court erred in overruling his motion to withdraw his pleas. He argues that his presentence motion should have been granted because his pleas were not voluntary. This assignment of error is not well taken.

{¶12} A defendant does not have an absolute right to withdraw a guilty plea prior to sentencing. A trial court must conduct a hearing to determine whether a reasonable or legitimate basis exists for the withdrawal of the plea.<sup>15</sup> The decision whether to grant or deny a presentence motion to withdraw a plea lies within the trial court's discretion.<sup>16</sup> Where a defendant (1) is represented by competent counsel, (2) is given a full hearing before entering the plea, and (3) is given a hearing on the motion to withdraw during which the court considers the defendant's arguments in support of the motion, the trial court does not abuse its discretion in denying the motion to withdraw the plea.<sup>17</sup>

{¶13} Fields had a full plea hearing and a separate hearing on his motion to withdraw his guilty pleas. As we have previously stated, the record shows that Fields's pleas were voluntary, even though the court failed to inform him about the mandatory fine. At the hearing on the motion to withdraw, the court attempted to remedy that deficiency by giving Fields the opportunity to file an affidavit of indigency so that it could remit the fine. Fields rejected the offer. This rejection

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<sup>15</sup> *State v. Xie* (1992), 62 Ohio St.3d 521, 527, 584 N.E.2d 715; *State v. Hunter*, 1st Dist. No. C-080730, 2009-Ohio-3259, ¶13.

<sup>16</sup> *Xie*, supra, at 527; *Hunter*, supra, at ¶13.

<sup>17</sup> *State v. Hall* (June 29, 2000), 8th Dist. No. 76374; *State v. Peterseim* (1980), 68 Ohio App.2d 211, 214, 428 N.E.2d 863.

showed that he was acting frivolously and did not suffer any real prejudice. But, as the trial court acknowledged, the state would have been prejudiced by Fields's withdrawal of his pleas four years after he had committed the offenses.

{¶14} Considering the totality of the circumstances, we cannot hold that the trial court's decision to deny Fields's motion to withdraw his pleas was so arbitrary, unreasonable, or unconscionable as to connote an abuse of discretion.<sup>18</sup> Consequently, we overrule his second assignment of error.

#### ***IV. Ineffective Assistance of Counsel***

{¶15} In his third assignment of error, Fields contends that he was denied the effective assistance of counsel. First, he argues that counsel's performance was deficient for failing to inform him of the maximum penalties he would face if he pleaded guilty and for recommending that he enter the guilty pleas. But these are issues that depend on matters outside the record on appeal, which we cannot consider.<sup>19</sup>

{¶16} The record shows that Fields's pleas were voluntary. He made a valid choice between alternatives, and the record does not show that his counsel's performance was deficient or that, but for counsel's unprofessional errors, he would not have entered his pleas.<sup>20</sup>

{¶17} Fields also contends that his counsel was ineffective for failing to file a motion to suppress evidence seized in a search of his apartment under a search warrant. The record does not show that Fields had a reasonable probability of

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<sup>18</sup> See *State v. Clark*, 71 Ohio St.3d 466, 470, 1994-Ohio-43, 644 N.E.2d 331.

<sup>19</sup> See *State v. Ishmail* (1978), 54 Ohio St.2d 402, 377 N.E.2d 500, paragraph one of the syllabus; *State v. Dieterle*, 1st Dist. No. C-070796, 2009-Ohio-1888; ¶49; *State v. Merkle*, 1st Dist. Nos. C-020454 and C-030557, 2004-Ohio-1913, ¶44-47.

<sup>20</sup> See *Hill v. Lockhart* (1985), 474 U.S. 52, 59, 106 S.Ct. 366; *Simmons*, supra, at ¶20; *State v. Peoples*, 1st Dist. No. C-050620, 2006-Ohio-2614, ¶22.

success on that motion. Therefore, his counsel was not ineffective for failing to file it.<sup>21</sup>

{¶18} Fields has not demonstrated that his counsel's representation fell below an objective standard of reasonableness or that, but for counsel's unprofessional errors, the result of the proceedings would have been otherwise. Therefore, he has failed to meet his burden to demonstrate ineffective assistance of counsel.<sup>22</sup> We overrule his third assignment of error and affirm his convictions.

Judgment affirmed.

**CUNNINGHAM, P.J., and SUNDERMANN, J., concur.**

*Please Note:*

The court has recorded its own entry this date.

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<sup>21</sup> See *State v. Brown*, 115 Ohio St.3d 55, 2007-Ohio-4837, 873 N.E.2d 858, ¶65; *State v. McCrary*, 1st Dist. No. C-080860, 2009-Ohio-4390, ¶13.

<sup>22</sup> *Strickland v. Washington* (1984), 466 U.S. 668, 687, 104 S.Ct. 2052; *State v. Hamblin* (1988), 37 Ohio St.3d 153, 155-156, 524 N.E.2d 476; *McCrary*, supra, at ¶12-17.