

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

STATE OF OHIO,	:	APPEAL NO. C-110783
	:	TRIAL NO. B-1004972
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
ANTHONY WASHINGTON,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. See S.Ct.R.Rep.Op. 2, App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant pleaded guilty to one count of burglary, a second-degree felony in violation of R.C. 2911.12(A)(2). In relevant part, Washington's plea form stated: "defendant \* \* \* agrees that in exchange for the state agreeing to an O.R. bond \* \* \* the defendant will appear on the date and time of sentencing and not engage in any illegal behavior pending sentencing. Defendant finally agrees that if he fails to appear on the date and time of sentencing, engages in any new criminal behavior, or violates the terms and conditions of his community control sanctions, defendant will serve a prison term of eight years." During Washington's plea colloquy, he acknowledged that he understood and consented to these terms. And he initialed the above-quoted section.

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Prior to being sentenced, Washington was indicted for another count of burglary. He then moved to withdraw his guilty plea. The trial court denied the motion and later sentenced him to eight years' incarceration. This appeal followed.

In his first assignment of error, Washington claims that the trial court abused its discretion when it did not allow him to withdraw his guilty plea prior to sentencing. While presentence motions to withdraw a guilty plea should generally be freely and liberally granted, *State v. Xie*, 62 Ohio St.3d 521, 524, 584 N.E.2d 715 (1992), this case more closely resembles a postsentence motion to withdraw. Washington admitted that he moved to withdraw his plea only after he had been charged with another count of burglary and consequently after he knew that he would likely be sentenced to eight years' imprisonment. We therefore find that the reasons underlying the strong presumption against granting a post-sentence motion to withdraw a guilty plea are applicable here. *See State v. Smith*, 49 Ohio St.2d 261, 264, 361 N.E.2d 1324 (1977). And we hold that the trial court did not abuse its discretion in denying Washington's motion to withdraw his guilty plea. *Xie* at paragraph two of the syllabus; *State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980). Washington's first assignment of error is overruled.

In his second assignment of error, Washington claims that the trial court erred in imposing a sentence of eight years' incarceration because there was no admissible evidence that Washington had violated the terms of his plea agreement. The record does not support this argument. Prior to sentencing, Detective Deaton testified under oath that Washington had confessed to burglary. This was admissible under Evid.R. 801(D)(2)(a). Washington's argument has no merit.

Washington next contends that the trial court believed that it had no discretion when it sentenced him. But the record indicates otherwise. Prior to sentencing, the

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trial court indicated, “I have discretion but I don’t exercise discretion when there’s been an agreed sentence plea agreement.”

Washington’s second assignment of error is overruled.

In his third assignment of error, Washington claims that the plea agreement was unconstitutional because it violated his right to offer mitigation prior to being sentenced. Upon a review of the trial court’s plea colloquy with Washington, it is evident that that Washington knowingly, intelligently, and voluntarily waived this right. *See State v. Nero*, 56 Ohio St.3d 106, 564 N.E.2d 474 (1990). Washington’s third assignment of error is therefore overruled.

The trial court’s judgment is affirmed.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**SUNDERMANN, P.J., HENDON and FISCHER, JJ.**

To the clerk:

Enter upon the journal of the court on August 24, 2012  
per order of the court \_\_\_\_\_.  
Presiding Judge