

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

STATE OF OHIO,	:	APPEAL NOS. C-160713
		C-160714
Plaintiff-Appellee,	:	TRIAL NOS. B-1603567
		B-1603725
vs.	:	
		<i>JUDGMENT ENTRY.</i>
DEON WILLINGHAM,	:	
Defendant-Appellant.	:	

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court. See Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Deon Willingham was indicted under two separate case numbers. In the case numbered B-1603567, he was charged with assault, a first-degree misdemeanor; improperly handling a firearm in a motor vehicle, a fourth-degree felony; carrying concealed weapons, a fourth-degree felony; and having weapons while under a disability, a third-degree felony. In the case numbered B-1603725, he was charged with burglary, a second-degree felony.

Following a plea hearing, Willingham withdrew his not-guilty pleas and pleaded guilty in the case numbered B-1603567 to assault and improperly handling a firearm in a motor vehicle. Willingham also pleaded guilty to burglary in the case numbered B-1603725. In exchange for his guilty pleas, the state dismissed the

remaining charges in the case numbered B-1603567 and agreed to prison sentences totaling four years.

In the case numbered B-1603567, the trial court sentenced Willingham to one year in prison on the firearm charge. On the misdemeanor assault charge, the trial court imposed a sentence of no jail time and no fine. In the case numbered B-1603725, the court imposed a four-year prison sentence for the burglary offense. It ordered that Willingham serve the one-year sentence in the case numbered B-1603567 concurrently to the sentence in the case numbered B-1603725, for a four-year aggregate prison sentence.

Three days after his plea and sentencing hearing, Willingham filed a motion to withdraw his guilty pleas in both cases on the ground that “he was not satisfied with the agreed sentence of four years that the Court imposed.” Seven days later, the trial court’s sentencing entry was journalized in each case. That same day, the court overruled Willingham’s Crim.R. 32.1 motions without a hearing.

In a single assignment of error, Willingham argues that “the trial court erred and abused its discretion by denying [his] motion[s] to withdraw his guilty pleas.”

Here, Willingham sought to withdraw his pleas in each case after the trial court had pronounced his sentence, but before the trial court had journalized the sentencing entry. Because the motions were filed after Willingham’s sentences had been imposed, we treat the motions as postsentence motions under Crim.R. 32.1. *See State v. Anderson*, 1st Dist. Hamilton No. C-070098, 2007-Ohio-6218, ¶ 3 and 14; *State v. Wilson*, 1st Dist. Hamilton No. C-950237, 1995 WL 734048, *1 (Dec. 13, 1995); *State v. Elam*, 1st Dist. Hamilton No. C-920216, 1992 WL 356076, *1 (Dec. 2, 1992); *State v. Hill*, 10th Dist. Franklin No. 12AP-463, 2013-Ohio-674, ¶ 13; *State v.*

Leonhart, 4th Dist. Washington No. 13CA38, 2014-Ohio-5601, ¶ 24-28; *State v. McComb*, 2d Dist. Montgomery No. 22570, 2008-Ohio-295, ¶ 6-8.

A defendant who seeks to withdraw his guilty plea after the trial court has imposed sentence bears the burden of establishing the existence of manifest injustice. *State v. Smith*, 49 Ohio St.2d 261, 361 N.E.2d 1324 (1977), paragraph one of the syllabus. “Manifest injustice” is an extremely high standard that permits a defendant to withdraw his plea only in extraordinary cases. *Id.* at 264. “A guilty plea that is not entered knowingly, voluntarily or intelligently creates a manifest injustice entitling a defendant to withdraw a guilty plea.” *State v. Franks*, 10th Dist. Franklin No. 04AP-362, 2005-Ohio-642, ¶ 6. We review a trial court’s denial of a postsentence motion to withdraw a guilty plea under an abuse-of-discretion standard. *Smith* at 263.

Willingham first argues that the trial court erred by denying the motions without a hearing. While Crim.R.32.1 does not expressly require a court to hold a hearing on a postsentence motion to withdraw a guilty plea, this court has adopted a rule that requires a hearing if the facts alleged in the motion and accepted as true by the court would require that the plea be withdrawn. *State v. West*, 1st Dist. Hamilton No. C-150587, 2017-Ohio-5596, ¶ 37. A trial court’s decision to hold a hearing is discretionary and may be reversed only if the court abused its discretion. *Id.*; see *State v. Royal*, 1st Dist. Hamilton No. C-160666, 2017-Ohio-4146, ¶ 13.

Here, Willingham’s motions were based solely on his dissatisfaction with the agreed sentence of four years that the trial court had imposed. Willingham offered no evidence to support the motions. Compare *State v. Kostyuchenko*, 2014-Ohio-324, 8 N.E.3d 353, ¶ 7-9 and ¶ 17 (1st Dist.), and *State v. Beasley*, 8th Dist. Cuyahoga

No. 96806, 2011-Ohio-6650 (where the defendants had put forth evidence by way of affidavits or testimony demonstrating that withdrawal of the guilty plea was necessary to correct a manifest injustice). The record, moreover, reflects knowing, intelligent, and voluntary pleas. Willingham's "change of heart" about his four-year sentence did not justify the withdrawal of his guilty pleas. *See State v. McMichael*, 10th Dist. Franklin Nos. 11AP-1042, 11AP-1043 and 11AP-1044, 2012-Ohio-3166, ¶ 12. Thus, the trial court did not abuse its discretion by summarily denying his motions without a hearing. We, therefore, overrule the assignment of error and affirm the judgments of the trial court.

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

MOCK, P.J., MILLER and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on September 27, 2017
per order of the court _____.
Presiding Judge