State v. Pineda

2024-Ohio-4635 (2024) | Cited 0 times | Ohio Court of Appeals | September 20, 2024

COURT OF APPEALS HOLMES COUNTY, OHIO FIFTH APPELLATE DISTRICT

STATE OF OHIO, : JUDGES: : Hon. John W. Wise, P.J. Plaintiff - Appellee : Hon. Craig R. Baldwin, J. : Hon. Andrew J. King, J. -vs- : : LORENZO QUINTEROS PINEDA, : Case No. 24CA001 : Defendant - Appellant : O P I N I O N

CHARACTER OF PROCEEDING: Appeal from the Holmes County Court of Common Pleas, Case No. 07 CR 071

JUDGMENT: Affirmed

DATE OF JUDGMENT: September 20, 2024

APPEARANCES:

For Plaintiff-Appellee For Defendant-Appellant

ROBERT K. HENDRIX PATRICK L. BROWN Assistant Prosecuting Attorney 439 N. Market St., Suite A Holmes County, Ohio Wooster, Ohio 44691 164 E Jackson Street Millersburg, Ohio 44654 Baldwin, J.

{¶1} The appellant, Lorenzo Quinteros Pineda, appeals the decision of the trial

court denying his March 17, 2023, motion to vacate his November 13, 2008, guilty plea.

Appellee is the State of Ohio.

STATEMENT OF THE FACTS AND THE CASE

{¶2} On November 13, 2007, the appellant was indicted on two felony counts:

(1) trafficking in marijuana, a felony of the fourth degree; and, (2) trafficking in cocaine, a

felony of the fifth degree. On January 16, 2008, the appellant entered pleas of guilty to

attempted trafficking in marijuana, a misdemeanor of the first degree; and, possession of

cocaine, a felony of the fifth degree. The appellant was sentenced on March 13, 2008.

{¶3} On September 2, 2008, the appellant filed a Motion for Post-Conviction

Relief and a Motion to Withdraw his guilty plea pursuant to Criminal Rule 32.1 in which

protected statu removal (deportation) and mandatory detention, during which he would be detained

d that a plea to any drug charge would effectively obliterate any chances

of staying lawfully in this Court [sic], will affect his ability to naturalize, and subjects him

plea that these charges would impact my ability to obtain my permanent residence, my temporary protected status, or that it would in any way affect my immigration status, I

{¶4} On October 9, 2008, the trial court conducted a hearing on the motion, and on October 20, 2008, issued a Journal Entry in which it vacated the Order of

{¶5} On November 13, 2008, the trial court conducted a hearing at which the

appellant entered a plea of guilty to a single count of trafficking in marijuana, a felony of

the fifth degree. 1 required by R.C. 2943.031. The following exchange took place between the appellant and

the trial court during the hearing:

plea? All right. If not, Mr. Pineda, you are now charged with the offense of

Trafficking in Marijuana, a felony of the fifth degree. What is your plea to

that charge?

THE COURT: All right. Before I accept that plea I need to ask you a lot of

seated while you answer them. So you may be seated.

MS. PEYTON: Just to make sure that he knows, he understands you, if you

MR. PINEDA: Yes.

1 While the appellant submits that he entered a plea of no contest to the single count of trafficking in marijuana, the record reveals that he pleaded guilty to said charge. MR. PINEDA: Yes.

THE COURT: Mr. Pineda, I understand that your attorney is a Spanish

speaker, is that correct?

MR. PINEDA: Yes.

THE COURT: Okay. And so if you have any questions please upset please stop, ask her any questions. If you need something

translated for you she can do that, okay?

MR. PINEDA: Okay.

you please give me your full name for the record?

MR. PINEDA: Lorenzo Quinteros Pineda.

THE COURT: And your age, sir?

THE COURT: And your home address, sir?

Millersburg, Ohio.

THE COURT: Mr. Pineda, I have a document in front of me that is entitled

MR. PINEDA: Yes, Your Honor.

THE COURT: Before you signed this document did you go over it with your

attorney?

MR. PINEDA: Yes, Your Honor. THE COURT: Sir, your English speaking skills seem to be pretty good. How

are your English reading skills? How well do you read English?

read.

MS. PEYTON: Just to proffer, Your Honor, I sat with the defendant outside

on the bench. The attorney very gratefully faxed that to me a week or so

ago. I went over it generally, the consequences that was provided, and I do

believe he understand [sic] the plea agreement.

everything contained in this document?

MR. PINEDA: Yes, Your Honor.

THE COURT: Let me review certain parts of it. First, the maximum penalties

that can be imposed. You understand that if I accept your plea of guilty I

could sentence you to up to twelve months in prison and fine you up to

$2,500?

MR. PINEDA: Yes, Your Honor.

MR. PINEDA: Yes, Your Honor.

THE COURT: Mr. Pineda, you are not a citizen of the United States, I THE COURT: And I am required to advise you as follows pursuant to

are hereby advised that conviction of the offense to which you are pleading

guilty may have the consequences of deportation, exclusion from the

admission to the United States, or denial of naturalization pursuant to the

pleading guilty?

MR. PINEDA: Yes.

THE COURT: All right. And have you talked with your attorney with regard

to the effect upon your remaining in the United States?

MR. PINEDA: Yes.

THE COURT: And if you are deported what potential penalties you would have if you returned to the United States. Have you discussed that with your attorney?

United States, Your Honor. I believe the statute refers to seeking admission?

THE COURT: To exclusion from admission to the United States

MS PEYTON: Right. And he is seeking admission through his father as a permanent resident application, so I think that might be what it refers to.

THE COURT: All right. And so counsel, once again, you are stating for the record he understands what the statute requires him to understand, is that correct? MS. PEYTON: Yes, Your Honor.

The appellant was sentenced the same day.

{¶6} On March 17, 2023, over fourteen (14) years later, the appellant filed a pro se Motion to Vacate No Contest Plea, in which he argued that he received erroneous immigration advice prior to entering his plea to trafficking in marijuana. He alleged that his counsel told him that his plea would not cause him immigration problems in the future. The appellant failed to attach an affidavit, sworn statement, or any other supportive material to his motion. The matter was scheduled for hearing, and counsel entered an appearance on the a

{¶7} During the November 9, 2023, hearing, the trial court heard oral arguments from counsel. The appellant, while present at the hearing, did not testify. The trial court issued a Journal and Docket Entry on December 8, 2023, in which it held that the record allegation regarding erroneous immigration advice from his attorney was not credible, and denied his 2023 motion to vacate his 2008 plea.

{¶8} The appellant filed a timely appeal, and sets forth the following assignments of error:

{¶9} THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING MR. EVIDENTIARY HEARING. {¶10} TRIAL COUNSEL WAS INEFFECTIVE FOR NOT INSISTING THAT THE TRIAL COURT CONDUCT AN ACTUAL EVIDENTIARY HEARING AT WHICH HIS ASSIGNMENT OF ERROR NUMBER I

{¶11} In his first assignment of error, the appellant submits that the trial court abused its discretion when it conducted a hearing on his March 20, 2023, motion without conducting an evidentiary hearing. We disagree.

STANDARD OF REVIEW

{¶12} The withdrawal of a guilty plea was recently discussed by this Court in State v. Harris, 2024-Ohio-2993 (5 th Dist.):

Crim.R. 32.1 provides that a trial court may grant a defendant's post sentence motion to withdraw a guilty plea only to correct a manifest

after the imposition of sentence has the burden of establishing the existence

State v. Smith, 49 Ohio St.2d 261(1977), paragraph

one of the syllabus. Accord, State v. Ahmed, 2018-Ohio-181, ¶15 (5th Dist.).

State ex rel. Schneider

v. Kreiner, 83 Ohio St.3d 203, 208 (1998), and relates to a fundamental flaw

in the plea proceedings resulting in a miscarriage of justice, State v.

Tekulve, 2010-Ohio-3604, ¶ 7 (1st Dist.), citing Kreiner at 208 and Smith at

standard, a post sentence withdrawal motion is allowable only in

Smith State v. Straley, 2019-Ohio-5206, ¶14. Although Crim.R. 32.1 does not provide a time limit for moving to

occurrence of the alleged cause for withdrawal and the filing of the motion

is a factor adversely affecting the credibility of the movant and militating

Smith, 49 Ohio St.2d at 264, citing

Oksanen v. United States, 362 F.2d 74, 79 (8th Cir. 1966). And generally,

res judicata bars a defendant from raising claims in a Crim.R. 32.1 post

sentencing motion to withdraw a guilty plea that he raised or could have

raised on direct appeal. See, State v. Ketterer, 2010-Ohio-3831, ¶ 59.

discretion of the trial court, and the good faith, credibility and weight of the

movant's assertions in support of the motion are matters to be resolved by

Smith at paragraph two of the syllabus. Thus, we review a trial

court's denial of a motion to withdraw a guilty plea under an abuse-of-

discretion standard. Smith at paragraph two of the syllabus; State v. Francis, 2004-Ohio-6894, ¶ 32; State v. Straley, 2019-Ohio-5206, ¶15.

This Court has recognized that an abuse of discretion can be found where the reasons given by the court for its action are clearly untenable, legally incorrect, or amount to a denial of justice, or where the judgment reaches an end or purpose not justified by reason and the evidence. Tennant v. Gallick, 2014-Ohio-477, ¶35 (9th Dist.); In re Guardianship of S.H., 2013-Ohio-4380, ¶ 9; (9th Dist.) State v. Firouzmandi, 2006-Ohio-5823, ¶54 (5th Dist.). Id. at ¶¶17-20.

ANALYSIS

{¶13} Our brethren at the Twelfth District Court of Appeals addressed the issue of guilty plea, stating:

A trial court need not hold an evidentiary hearing on every post-sentence motion to withdraw a guilty plea. Heath at ¶ 8. A trial court need not hold such a hearing where the record indicates the movant is not entitled to relief. Mays at ¶ 6. However, an evidentiary hearing on a post-sentence motion to withdraw a guilty plea is required if the facts alleged by the defendant and accepted as true would require the court to permit that plea to be withdrawn. Id.; State v. Hamed vant must establish a reasonable likelihood that a withdrawal of his plea is necessary to correct a manifest injustice before a trial court must hold [an

State v. Stewart, Greene App.

No.2003 CA 28, 2004 Ohio 3574, ¶ 6.

State v. Degaro, 2009-Ohio-2966, (12 th Dist.) ¶ 13. The Second District Court of Appeals

subsequently held:

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sentence motion to withdraw a plea. The movant must establish a

reasonable likelihood that withdrawal of his plea is necessary to correct a

manifest injustice before a trial court must hold a hearing on his motion.

State v. Humphrey, Montgomery App. No. 19243, 2002-Ohio-6525 [2002 State v. Stewart, 2d Dist. Greene No. 2002-CA-28,

2004-Ohio-3574, 2004 WL 1506252, ¶ 6.

State v. Baker, 2018-Ohio-669, (2 nd Dist.) ¶ 13.

{¶14} In this case, the appellant filed a motion to vacate in 2023 in which he

alleged that he did not understand the ramifications of his 2008 plea of guilty to trafficking

in marijuana. He did not attach an affidavit to his motion, nor did he provide any other

documentation or corroborative evidence in support of his motion. The statements made

likelihood that the withdrawal of his plea fourteen years after entering it is necessary to

correct a manifest injustice such that the trial court was required to hold an evidentiary

hearing on his motion. motion to vacate shows that he was, in fact, aware of the ramifications of pleading guilty

to a felony drug offense.

{¶15} Furthermore, the trial court conducted at which the appellant was present. There is nothing in

the record to indicate that the

appellant proffered testimony or that the trial court refused to permit him to testify. In fact,

the transcript of the November 9, 2023, hearing illustrates that the trial court accepted

:

THE COURT: Thank you, Mr. Bartell. Mr. and we had discussed

essentially the State and the Court is accepting as to how Mr. Quinteros

Pineda would have testified today, that he was told by this attorney her

name but

MR. BARTELL: Peyton, Judge. THE COURT: Jennifer Peyton, yeah that the trafficking in marijuana would

not preclude him would not bar him as he is as he finds himself today.

that is indicated in Section 212, that I discussed and referred to in 212(H)

of the Immigration and Nationality Act.

to be credible.

{¶16} Finally, the appellant filed a motion to withdraw in 2008 to which he attached

a sworn statement in which he averred that he was unaware of the impact of a felony

conviction on his immigration status when he pleaded guilty in March of 2008, and was

permitted to withdraw his guilty plea to the trafficking in cocaine charge on that basis.

Logic dictates that he was aware of the impact of pleading guilty to a felony when he

thereafter entered a guilty plea to the trafficking in marijuana charge. Based upon these

facts, the trial court found argument regarding his alleged lack of

understanding as to how his guilty plea to the trafficking in marijuana charge might impact

his immigration status to be unpersuasive.

{¶17} We find that the trial court did not abuse its discretion with regard to the

November 9, 2023, hearing, nor did it abuse its discretion when it found arguments to be unpersuasive and overruled his March 17, 2023, motion to withdraw his

2008 guilty plea. The other corroborative evidence, and the record does not reflect the type of extraordinary

circumstances necessary to allow the appellant to withdraw his guilty plea more than

fourteen (14) years after sentencing. Furthermore, the court conducted a hearing on the motion at which the appellant was in attendance and was therefore available to testify.

There was no indication that any further evidence would have been proffered. The

appellant's first assignment of error is therefore overruled.

ASSIGNMENT OF ERROR NUMBER II

{¶18} In his second assignment of error, the appellant alleges ineffective

assistance of counsel because his trial counsel did not insist on an evidentiary hearing at

which the appellant could provide testimony. We disagree.

STANDARD OF REVIEW

{¶19} The standard of review for ineffective assistance of counsel was set forth in

the seminal case of Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d

674 (1984), and was discussed by this court in Mansfield v. Studer, 5 th Dist. Richland

Nos. 2011-CA-93 and 2011-CA-94, 2012-Ohio-4840:

A claim of ineffective assistance of counsel requires a two-prong

analysis. The first inquiry is whether counsel's performance fell below an objective standard of reasonable representation involving a substantial violation of any of defense counsel's essential duties to appellant. The second prong is whether the appellant was prejudiced by counsel's ineffectiveness. Lockhart v. Fretwell (1993), 506 U.S. 364, 113 S.Ct. 838 (1993); Strickland v. Washington (1984), 466 U.S. 668, 104 S.Ct. 2052(1984); State v. Bradley (1989), 42 Ohio St.3d 136, 538 N.E.2d 373(1989).

In order to warrant a finding that trial counsel was ineffective, the petitioner must meet both the deficient performance and prejudice prongs of Strickland and Bradley. Knowles v. Mirzayance, 556 U.S. 111, 129 S.Ct. 1411, 1419, 173 L.Ed.2d 251(2009).

To show deficient performance, appellant must establish that Strickland v. Washington, 466 U.S. at 688, 104 S.Ct. at 2064. This requires showing that counsel made errors so serious that the Sixth Amendment. Strickland v. Washington 466 U.S. at 687, 104 S.Ct. at 2064. Counsel also has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process. Strickland v. Washington 466 U.S. at 688, 104 S.Ct. 2052 at 2065.

Thus, a court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the

facts of the particular case, viewed as of the time of counsel's

conduct. A convicted defendant making a claim of ineffective

assistance must identify the acts or omissions of counsel that are

alleged not to have been the result of reasonable professional

judgment. The court must then determine whether, in light of all the

circumstances, the identified acts or omissions were outside the

wide range of professionally competent assistance. In making that

determination, the court should keep in mind that counsel's function,

as elaborated in prevailing professional norms, is to make the

adversarial testing process work in the particular case. At the same time, the court should recognize that counsel is strongly presumed

to have rendered adequate assistance and made all significant

decisions in the exercise of reasonable professional judgment.

Strickland v. Washington, 466 U.S. 668 at 689,104 S.Ct. at 2064.

[and] the range of legitimate decisions regarding how best to represent a

counsel's assistance was reasonable cons Strickland v. Washington, 466 U.S. 668 at 689,104 S.Ct. at 2064. At all

Strickland v. Washington, 466 U.S. 668 at 689,104 S.Ct. at

2064.

Studer, supra, at ¶¶ 58-61. Thus, in order to prevail on an ineffective assistance of counsel

performance fell below an objective standard of reasonable representation involving a

substantial violation of an essential duty to the appellant; and second, that the appellant

was prejudiced by such the alleged ineffectiveness.

ANALYSIS

{¶20} The appellant has argued that his trial counsel was ineffective because he

testimony could be presented. We disagree.

{¶21} As set forth in our analysis of assignment of error number one, the appellant

failed to support his 2023 motion to withdraw with evidence sufficient to establish a reasonable likelihood that the withdrawal of his plea fourteen years later was necessary

to correct a manifest injustice such that the trial court was required to hold an evidentiary

hearing on his motion. Failure to request such a hearing in the absence of prima facie

evidence that there was a reasonable likelihood of manifest injustice sufficient to

necessitate the hearing does not constitute conduct that falls below an objective standard

of reasonable representation.

{¶22} Furthermore, the appellant acknowledged during the November 13, 2008,

hearing on his 2008 motion to withdraw that he talked with his attorney regarding the

effect of his plea on his ability to remain in the United States. In addition, the appellant

attached an affidavit to his 2008 motion in which he averred that in May of 2008 he was

advised that his criminal charges the felony and the misdemeanor would seriously

affect [his] immigration status, and would subject [him] to mandatory detention (being

detained without bond during the processing of [his] The appellant

also averred that he realized during the May, 2008 meeting with his attorney that a felony

charge would make him ineligible for temporary protected status. T 2008

sworn statement establishes that he was made aware, by counsel, of the possible impact

of a plea of guilty to a felony on his immigration status prior to the November 13, 2008,

hearing at which he pleaded guilty to the charge of trafficking in marijuana, a fifth degree

felony.

{¶23} Finally, the appellant was present for the November 9, 2023, hearing, and

there is nothing in the record to indicate that he was not permitted to testify. In fact, the

trial court indicated on the record that the State and the court essentially stipulated to

- that he was told by his 2008 counsel that the trafficking in marijuana conviction would not preclude him, or bar him, from eligibility for

the waiver as discussed by his 2023 attorney during the November 9, 2023, hearing. The

the lack of

corroborating evidence and the fact that he submitted a sworn statement with his 2008

motion to withdraw in which he averred that he had been advised by counsel regarding

the ramifications of pleading guilty to a felony upon his immigration status.

{¶24} We find the appellant has failed to performance fell below an objective standard of reasonable representation involving a

substantial violation of any of his essential duties. As such second

assignment of error is without merit and is overruled.

CONCLUSION

{¶25} numbers

one and two are overruled, and the decision of the Holmes County Court of Common

Pleas is hereby affirmed.

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By: Baldwin, J.

Wise, John, P.J. and

King, J. concur.