

**COURT OF APPEALS
THIRD APPELLATE DISTRICT
VAN WERT COUNTY**

STATE OF OHIO

PLAINTIFF-APPELLEE

CASE NUMBER 15-99-13

v.

WILLIAM C. RIGGS

OPINION

DEFENDANT-APPELLANT

CHARACTER OF PROCEEDINGS: Criminal Appeal from Common Pleas Court.

JUDGMENT: Judgment affirmed.

DATE OF JUDGMENT ENTRY: June 6, 2000.

ATTORNEYS:

**WILLIAM C. RIGGS
In Propria Persona
Inmate #A306-920
P.O. Box 4501
Lima, OH 45802
Appellant.**

**CHARLES F. KENNEDY, III
Prosecuting Attorney
121 East Main Street
Van Wert, OH 45891
For Appellee.**

SHAW, J. Defendant William C. Riggs appeals the October 5, 1999 judgment of the Van Wert County Common Pleas Court denying his post-sentence motion to withdraw plea.

On December 9, 1994, defendant was indicted by the Van Wert County Grand Jury for one first degree felony count of aiding and abetting aggravated robbery and one fourth degree felony count of possession of cocaine. On December 21, 1999, and pursuant to plea negotiations, the defendant entered a written guilty plea to the aggravated robbery charge. The trial court dismissed the possession charge, and on February 1, 1995 sentenced the defendant to an indefinite term of ten to twenty-five years incarceration with the Department of Rehabilitation and Correction.

On March 2, 1999, defendant filed a motion to withdraw his plea of guilty to the aggravated robbery charge. Defendant argued that his plea had not been voluntarily made because his counsel was ineffective. Defendant alleged that his counsel had failed to challenge the validity or admissibility of an inculpatory statement the defendant had made to the Van Wert Police Department, and that his counsel had failed to explain to him the defenses open to him. Defendant also asserted that he had been under the influence of cocaine at the time he had made the inculpatory statement to the police, but did not provide any evidence to support this claim.

On October 5, 1999, the Van Wert County Common Pleas Court denied defendant's motion. Defendant now appeals *pro se*, and asserts two assignments of error with the trial court's judgment.

[The] Trial Court abused [its] judicial discretion in denying appellant[‘s] motion to withdraw his guilty plea when appellant was denied the effective assistance of counsel for failure to challenge the alleged statement.

[The] Trial Court abused [its] judicial discretion in denying appellant[‘s] motion to withdraw his guilty plea when appellant was denied the effective assistance of counsel for failure to explain the different types of possible defenses open to appellant.

As defendant's assignments of error raise similar issues for our review, we will address them together. Defendant essentially contends that he received bad legal advice, and that his plea was based upon that advice. Defendant also contends that his attorney had told him he would receive an indefinite sentence of five to ten years incarceration, rather than the maximum ten to twenty-five year sentence he actually received. We reject both arguments. The record does reveal that the State agreed not to oppose a minimum sentence for the defendant, and the State adhered to that position at defendant's sentencing. However, in this case the trial court's discretion in sentencing the defendant was in no way affected by the State's position on sentencing. See, *e.g.*, *State v. Mullhollen* (1997), 119 Ohio App.3d 560, 566-67; *State v. Darmour* (1987), 38 Ohio App.3d 160. Moreover, the State entered a *nolle prosequi* to the possession charge based upon defendant's

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plea of guilty to the aggravated robbery. Cf. *Mullhollen*, 119 Ohio App.3d at 566-67. Finally, both his testimony at the plea hearing and his written plea indicate that defendant was in fact satisfied with the representation and advice he had received. See *id.* at 567. The trial court's conclusion, that defendant had failed to establish that his plea was not knowingly and voluntarily made and created a manifest injustice, was therefore not an abuse of discretion. Cf. Crim.R. 32.1. For these reasons, defendant's two assignments of error are overruled and the judgment of the Van Wert County Court of Common Pleas is affirmed.

Judgment affirmed.

HADLEY, P.J., and BRYANT, J., concur.

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