

[Cite as *State v. Gardner*, 2003-Ohio-1598.]

**COURT OF APPEALS
THIRD APPELLATE DISTRICT
UNION COUNTY**

STATE OF OHIO

CASE NUMBER 14-02-18

PLAINTIFF-APPELLEE

OPINION

v.

HOWARD GARDNER

DEFENDANT-APPELLANT

STATE OF OHIO

CASE NUMBER 14-02-19

PLAINTIFF-APPELLEE

OPINION

v.

HOWARD GARDNER

DEFENDANT-APPELLANT

CHARACTER OF PROCEEDINGS: Criminal Appeals from Municipal Court.

JUDGMENTS: Judgments affirmed.

DATE OF JUDGMENT ENTRIES: March 31, 2003.

ATTORNEYS:

ELIZABETH GABA
Attorney at Law
Reg. #0063152
1021 South High Street
Columbus, OH 43215
For Appellant.
JOHN M. EUFINGER
City Law Director
Reg. #0002609
Timothy Aslaner
Reg. #0068928
P.O. Box 266
Marysville, OH 43040
For Appellee.

Walters, J.

{¶1} Defendant-Appellant, Howard Gardner, brings this consolidated appeal from Marysville Municipal Court judgments finding him guilty of first-degree misdemeanor counts of domestic violence and child endangering.¹ Appellant argues that his pleas were not knowing and voluntary, claiming he was

¹ R.C. 2929.25(B) and 2929.22(A).

“tired, disoriented, and befuddled as to what was occurring” and that he was not informed that a guilty plea would waive any self-defense claim. Based on the totality of the circumstances and the trial court's compliance with Crim.R. 11, we do not find that the court acted unreasonably or arbitrarily in determining Appellant's contentions lacked merit and did not constitute a manifest injustice creating prejudicial error. Accordingly, we affirm the judgment of the trial court.

{¶2} Facts and procedural posture relevant to issues raised on appeal are as follows: On June 5, 2002, Appellant and his wife were involved in a physical altercation. The couple's six-year-old child witnessed the incident and attempted to intervene. Appellant's wife subsequently sought treatment for a bloodied lip, concussion, and possible broken nose at a local emergency room. Hospital staff reported the incident to local authorities. As a result, Appellant was arrested on misdemeanor charges of domestic violence and child endangering.

{¶3} Appellant was arraigned the following morning before the Marysville Municipal Court. The court advised Appellant of the nature of his charges and his rights in relation thereto. Appellant declined representation and proceeded to enter pleas of guilt to both offenses. The court discussed the import of the pleas with Appellant and reviewed the underlying circumstances of the

charges. Although Appellant initially indicated that his wife had instigated the physical altercation, he conceded that he struck her a number of times and informed an arresting officer that he lost control. Appellant's wife reported that when she slapped him during a verbal argument, he kicked her backwards over a coffee table, sat on top of her, and punched her repeatedly in the face. When she attempted to call 9-1-1, Appellant refused to allow her to use the telephone or leave. Satisfied that Appellant's pleas were knowing and voluntary, the court accepted the pleas and proceeded to sentencing.

{¶4} On August 13, 2002, Appellant moved to withdraw his previously tendered pleas, claiming that he was disoriented during the hearing and was unaware of the consequences of his pleas. He further argued that he had a potential self-defense claim and that his lack of knowledge of this affirmative defense precluded knowing and voluntary pleas. The trial court denied the motions, concluding that, “[a]t most, [the motion] reflects a change in the defendant's mind.” Appellant appeals the denial of his motions, presenting two assignments of error for our review.

Assignment of Error Number One

The guilty pleas entered by Appellant Howard Gardner on June 6, 2002, were not knowingly, intelligently and voluntarily rendered to the Court.

{¶5} Claiming that he was “in a dazed and confused state” when he tendered his pleas, Appellant argues that his pleas were not knowing or voluntary and that the trial court erred in denying his motion to withdraw his guilty pleas.

{¶6} A defendant may withdraw his guilty plea after sentence is imposed only to correct a manifest injustice.² The movant seeking to withdraw the guilty plea has the burden of proving the existence of manifest injustice.³ “[M]anifest injustice [has been] defined as a 'clear or openly unjust act.' Another court has referred to it as 'an extraordinary and fundamental flaw in the plea proceeding.' Again, 'manifest injustice' comprehends a fundamental flaw in the path of justice so extraordinary that the defendant could not have sought redress from the resulting prejudice through another form of application reasonably available to him or her.”⁴ While “manifest injustice” is a flexible and variously defined

² Crim.R. 32.1.

³ *State v. Smith* (1977), 49 Ohio St.2d 261, 264.

⁴ *State v. Sneed*, Cuyahoga App. No. 80902, [2002-Ohio-6502](#), ¶ 13 (citations omitted).

concept, it is clear that under such standard, a postsentence withdrawal motion is allowable only in extraordinary cases.⁵

{¶7} Review of the transcript indicates the trial court complied with Crim.R. 11(C) in accepting Appellant's pleas. The court fully apprised Appellant of the possible penalties for each charge and explained that he was entitled to bail, that he had the right to refuse to testify, and that no one could make any promises on behalf of the court as to the manner of the disposition of his case. The court also advised that he had the right to have a lawyer present for the proceedings and, if he could not afford an attorney, one would be appointed for him at no charge. Upon inquiry, Appellant declined representation, stating that he did not wish to have a lawyer. Appellant was further informed that he had rights to a trial by jury, to confront the witnesses against him, to compel the presentation of witnesses in his favor, to require proof of his guilt beyond a reasonable doubt, and to refuse to testify. The court then explained the implications of entering pleas of innocence, no contest, and guilt, and any rights waived thereby. Appellant stated that he had no questions as to his rights. When the court inquired whether he was prepared to enter a plea that day, Appellant stated that he wanted to plead guilty. The court

⁵ *Smith*, 49 Ohio St.2d at 264, citing *United States v. Semel* (4th Cir. 1965), 347 F.2d 228.

individually reviewed the charges and corresponding pleas, refused to accept anything less than an unequivocal plea, and required Appellant to provide a description of the underlying incident to ensure that he understood what he was pleading guilty to. After the State read the police report and victim's statements, Appellant declined the opportunity to respond to or supplement the evidence presented.

{¶8} “The motion [to withdraw a plea] is addressed to the sound 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 that court.”⁶ Reviewing the record before us, we find Appellant's contentions that he was “in a dazed and confused state,” was unaware of the nature of the proceedings, or was “tired, disoriented [or] befuddled as to what was occurring” to be, at best, speculative. Portions of the record quoted in support of these allegations are truncated statements, often belying the substance of the colloquy between the court and Appellant. Although Appellant asserts on appeal that he may be cognitively impaired, he made no such claim before the trial court, and there is no basis in the record upon which to conclude that he suffered from mental

⁶ *Id.*

deficiencies. Conversely, the record reflects a clear and lucid understanding of the rights precisely explained by the trial court. Therefore, based on the totality of the circumstances and the trial court's compliance with Crim.R. 11, we do not find that the court acted unreasonably or arbitrarily in determining Appellant's contentions lacked merit and did not constitute a manifest injustice creating prejudicial error.

{¶9} Accordingly, we overrule Appellant's first assignment of error.

Assignment of Error Number Two

The Court erred in not examining the affirmative defenses available to Appellant as ascertained through Appellant's statements to the Court, therefore the pleas were not knowingly and voluntarily entered.

{¶10} Appellant further contends that his plea was not knowing and voluntary because the trial court did not inform him that pleading guilty would forfeit his right to assert the affirmative defense of self-defense. We cannot agree.

{¶11} Crim.R. 11 is an implementation of the requirement that the trial court determine that a pleader possesses sufficient understanding of the nature of the charge and knowingly waives his constitutional rights involved in a plea. Crim.R. 11(C) lists those rights the court must inform the defendant he forfeits by entering a plea of guilty. "There is no obligation that the court go beyond the

requirements of Crim.R. 11(C) before accepting a guilty plea. To the contrary, courts have repeatedly rejected claims challenging the voluntariness of a plea because the defendant was not advised of a right or waiver not specified in Crim.R. 11."⁷ While the court must advise the defendant he will forfeit critical constitutional rights by pleading guilty, "substantial compliance with Crim.R. 11(C) will suffice to advise the defendant about other matters [,]" such as waivers of appeal and affirmative defenses.⁸ The trial court may ascertain the defendant "understands those other matters from the totality of the circumstances, without informing him about them directly."⁹

{¶12} In support of the assigned error, Appellant cites *State v. Dickey*,¹⁰ wherein it was held that the failure to advise a defendant of the affirmative defenses enumerated in the carrying a concealed weapon statute precluded a knowing and voluntarily no contest plea. However, the Ohio Supreme Court effectively overruled *Dickey* in *State v. Reynolds*,¹¹ holding that:

⁷ *State v. Railing* (Oct. 20, 1994), Cuyahoga App. No. 67137 (citations omitted).

⁸ *State v. Young* (June 18, 1997), Summit App. No. 18031, citing *State v. Williams* (1989), 65 Ohio App.3d 70, 73, quoting *State v. Gibson* (1986), 34 Ohio App.3d 146, 147.

⁹ *Id.*

¹⁰ *State v. Dickey* (1984), 15 Ohio App.3d 151, 152, citing Crim.R. 11, R.C. 2923.12.

¹¹ *State v. Reynolds* (1988), 40 Ohio St.3d 334.

The affirmative defenses to the charge are found in R.C. 2923.12(C), but are clearly not elements thereof. Consequently, the trial court is not required to apprise the defendant of the availability of these defenses prior to accepting a guilty plea to the charge and its failure to do so will not defeat a finding of "substantial compliance" with Crim.R. 11(C).¹²

{¶13} “It logically follows that if the trial court is not required to apprise the defendant of any available affirmative defenses prior to accepting a guilty plea, it is also not required to inform the defendant a plea of guilty will waive any such defenses.”¹³ While *Reynolds* involved a defendant represented by counsel, this proposition has been extended to defendants who are properly apprised of their right to counsel and reject representation.¹⁴

{¶14} Our review of the record does not indicate the trial court abused its discretion in this regard. As discussed above, Appellant was properly advised of his right to court-appointed counsel and knowingly rejected representation. Appellant’s statements before the trial court support that he fully understood the nature of the charges against him, his rights in relation thereto, and the import of his conduct. Based on the totality of the circumstances and the trial court's

¹² *Id.* at 335-336, citing *State v. Stewart* (1977), 51 Ohio St.2d 86.

¹³ *Young*, supra, citing *Medina v. Papadelis* (Apr. 18, 1990), Medina App. No. 1810.

¹⁴ See, e.g., *State v. Firestone* (Mar. 28, 2001), Vinton App. No. 00CA542, [2001-Ohio-2506](#).

compliance with Crim.R. 11, the trial court was not unreasonable in determining that Appellant's plea was knowing, intelligent, and voluntary, and that he had failed to establish a manifest injustice creating prejudicial error.

{¶15} Having found no error prejudicial to the appellant herein, in the particulars assigned and argued, the judgments of the Union County Common Pleas Court are hereby affirmed.

Judgments affirmed.

BRYANT, P.J., and CUPP, J., concur.