

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 12AP-392
	:	(C.P.C. No. 08 CR 6186)
Daniel S. Fowler,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on January 17, 2013

Ron O'Brien, Prosecuting Attorney, and *Laura R. Swisher*, for appellee.

Daniel S. Fowler, pro se.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} Daniel S. Fowler is appealing from the trial court's refusal to allow him to withdraw his guilty plea and refusal to resentence him. He assigns five errors for our consideration:

[I.] There is no time limitation mandated by Crim.R. 32.1. The Trial Court failed to give any reason as to what if anything constituted an "unreasonable delay" in the filing of Appellant's motion. And Furthermore, the Appellant's case did not meet the criteria under which the Supreme Court of Ohio has ruled that timeliness should be a factor in denying such a motion. Thus the trial court abused it's discretion in denying Defendant's motion to withdraw his plea based on the issue of timeliness.

[II.] The Trial Court denied the Defendant's motion to withdraw his guilty plea, at least in part on grounds that were not alleged or at issue in the Defendant's motion, and furthermore applied the wrong standard in denying that motion. In addition, The Court failed to address, or rule on the issue that is at the heart of Defendant's motion, namely the fact that the sentence rendered by the original Trial Court, was and is, "Contrary to Law", and an "Abuse of Discretion".

[III.] The sentence rendered by the original Trial Court is Contrary to Law because it fails to reflect any consideration of the purposes and principles of felony sentencing contained in Ohio Revised Code (R.C.) Section 2929.11 or the seriousness and recidivism factors in Section 2929.12. Furthermore, the original Trial Court committed an Abuse of Discretion when it imposed near-maximum and consecutive sentences which were unsupported in the record and without adequate justification.

[IV.] The Defendant's actions do not represent the worst form of the offense for which he plead guilty to and was convicted, nor could he be considered the worst type of offender. Thus the sentence rendered in this case was disproportionate and not in accordance with the sentencing guidelines laid out in R.C. 2929.11, 2929.12, and 2929.13. Nor was it commensurate to sentences rendered for similar offenses and offenders, a fact which also renders it Contrary to Law.

[V.] In it's decision, the Trial Court erroneously stated the Ohio Supreme Court's position(s)/statement(s) regarding the admissibility of imposing consecutive maximum sentences, and relied on this misinterpretation at least in part, in denying Defendant's motion.

{¶ 2} Fowler was originally indicted on 33 charges. In April 2009, he entered guilty pleas to 8 of the charges, 5 of which were misdemeanors. The judge then assigned to his case, sentenced him to a term of incarceration of 9 years and classified Fowler as a Tier II sex offender.

{¶ 3} Fowler pursued a direct appeal following his sentencing. The judgment and sentence were affirmed.

{¶ 4} Almost three years after the date he entered his guilty pleas, Fowler filed a motion seeking to withdraw his pleas and asking that he be resentenced. The judge who

originally sentenced Fowler had retired and her replacement overruled the motion. This appeal then ensued.

{¶ 5} Crim.R. 32.1 requires that a person who seeks to withdraw guilty pleas after sentencing has occurred demonstrate a manifest injustice in order to be successful in having the pleas withdrawn. Fowler does not argue that a sentence of nine years constitutes a manifest injustice. He also does not argue that a plea bargain which reduced the number of charges against him from 33 charges, including 13 F-2s for which he could have received 8 years of incarceration on each F-2, somehow constituted a manifest injustice. Since he cannot demonstrate a manifest injustice in either his plea bargain or in the sentence imposed on him, his motion to set aside his guilty pleas was properly overruled by the trial court.

{¶ 6} The first and second assignments of error, which argue issues which are of no consequence given the lack of manifest injustice in the original proceedings, are overruled.

{¶ 7} The third, fourth and fifth assignments of error attack the sentence of incarceration imposed on Fowler. The issues, which he argued in the trial court and which he again argues on appeal, were already addressed in his first appeal, or could have been addressed in that appeal. As a result, his sentence is a matter already decided by this appellate court and is a matter barred from further consideration by the doctrine of res judicata ("a matter decided or adjudicated").

{¶ 8} The third, fourth and fifth assignments of error are overruled.

{¶ 9} All five assignments of error having been overruled, the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

SADLER and DORRIAN, JJ., concur.
