

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

STATE OF OHIO,	:	APPEAL NO. C-160335
	:	TRIAL NO. B-1503323
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
RONALD PARKER,	:	
Defendant-Appellant.	:	

We consider this appeal 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 Ronald Parker was arrested after stealing items from a Kroger grocery store. While attempting to flee from the store, he engaged two store employees in an altercation that resulted in minor injuries to a customer. After his arrest, he complained of chest pains, and officers had him transported to the hospital. Parker was told that he would be charged with escape if he left the hospital. Parker fled upon arriving at the hospital, and was later apprehended by police.

Parker was charged with robbery, in violation of R.C. 2911.02(A)(2), a felony of the second degree, and escape, in violation of R.C. 2921.34(A)(1), a felony of the second degree. On December 16, 2015, Parker entered a guilty plea to the robbery charge, in exchange for which the state agreed to drop the escape count. After a full hearing held pursuant to Crim.R. 11, the trial court accepted Parker's plea and found him guilty of theft. Parker was released on that date to await sentencing.

Parker's original sentencing hearing was set for January 19. That hearing was continued to February 16 due to Parker's hospitalization. On the date of his sentencing hearing, Parker filed a motion to withdraw his guilty plea. The trial court continued the hearing to February 29 to consider the motion to withdraw.

At the hearing, counsel indicated that Parker had gone to the Kroger store where the offense occurred and had seen what appeared to be a security camera that would have captured the area of the altercation. Parker did not have a video from Kroger, had not sent a subpoena in order to obtain it for the hearing, and had not spoken to anyone at Kroger to confirm that such evidence was available. According to the prosecutor, the state had contacted Kroger and had been told that no video recording of the incident existed. The trial court denied the motion to withdraw the guilty plea and sentenced Parker to three years in prison.

In his first assignment of error, Parker claims that the trial court abused its discretion when it denied his motion to withdraw his guilty plea. A presentence motion to withdraw a guilty plea should be freely and liberally granted, but a defendant has no absolute right to withdraw a guilty plea. *State v. Xie*, 62 Ohio St.3d 521, 527, 584 N.E.2d 715 (1992). This court has outlined various factors to be considered when determining whether a trial court abused its discretion in ruling on a motion to withdraw a guilty plea. These factors include (1) whether the defendant was represented by highly competent counsel, (2) whether the defendant was accorded a complete Crim.R. 11 hearing before pleading guilty, (3) whether the trial court held a hearing on the motion to withdraw in which it gave full and fair consideration to the motion, (4) whether the defendant timely filed the motion to withdraw and supported it with specific reasons for withdrawal, (5) whether the defendant was possibly not guilty of, or could offer a complete defense to, the charges, and (6) whether granting the motion would result in prejudice to the state. *See State v. Fish*, 104 Ohio App.3d 236, 240, 661 N.E.2d 788 (1st Dist.1995); *State v. Sykes*, 1st Dist. Hamilton No. C-060277, 2007-Ohio-3086, ¶ 10.

In this case, the trial court was presented with Parker's assertion that Kroger might have had a camera that captured the incident, but he had done nothing to confirm whether such footage existed or to secure it. On the other hand, the state

informed the trial court that Kroger had indicated that no such footage existed. Additionally, Parker did not explain how such evidence would demonstrate that he was not guilty of the offense or that he had a complete defense to the charge. Parker was represented by highly competent counsel throughout the proceedings; he was accorded a complete Crim.R. 11 hearing; Parker filed his motion to withdraw his plea on the day of his sentencing hearing; and the motion itself did not give any reasons for seeking to withdraw the plea. While Parker was not afforded a lengthy hearing, he was given the opportunity to be heard on the issues he raised and has not demonstrated that he would have presented more had the hearing been more thorough. On this record, we cannot conclude that the trial court abused its discretion when it overruled Parker's motion to withdraw the plea. We overrule his first assignment of error.

In his second assignment of error, Parker claims that the trial court erred when it sentenced him to prison for three years. This court will only modify or vacate a sentence if it clearly and convincingly finds that either the record does not support the mandatory sentencing findings or the sentence is otherwise contrary to law. *State v. White*, 2013-Ohio-4225, 997 N.E.2d 629, ¶ 11 (1st Dist.). The trial court was not required to make findings concerning the R.C. 2929.11 felony-sentencing purposes and principles or the R.C. 2929.12 seriousness-and-recidivism factors. *See State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, ¶ 17. In the absence of an affirmative demonstration to the contrary, we presume from a silent record that the court considered the factors. *State v. Alexander*, 1st Dist. Hamilton Nos. C-110828 and C-110829, 2012-Ohio-3349, ¶ 24.

Parker claims that the trial court should not have sentenced him to prison because he had been suffering from alcohol and drug dependency and would have benefited from treatment. But Parker presented no argument on how his addictions related to his commission of the offenses with which he was charged. Based on his

OHIO FIRST DISTRICT COURT OF APPEALS

prior criminal history, the fact that he escaped from custody after his arrest in this case, and the fact that the trial court had to issue a capias for him on three separate occasions while the matter was pending, we cannot say that the record does not clearly and convincingly support the sentencing decision of the trial court. We overrule Parker's second assignment of error and affirm the judgment of the trial court.

A certified copy of this judgment entry is 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., CUNNINGHAM and ZAYAS, JJ.

To the clerk:

Enter upon the journal of the court on February 15, 2017
per order of the court _____.
Presiding Judge