

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

STATE OF OHIO,	:	APPEAL NO. C-080478
	:	TRIAL NO. B-0706505
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
	:	
TERRY JONES,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Defendant-appellant, Terry Jones, appeals the judgment of the Hamilton County Court of Common Pleas convicting him of trafficking in cocaine.

On October 10, 2007, Jones entered a guilty plea to the offense, and the trial court scheduled a sentencing hearing for November 20, 2007. Jones failed to appear on the scheduled date and was apprehended approximately six months later.

On May 27, 2008, Jones made an oral motion to withdraw his guilty plea on the basis that he was “developmentally disabled” and had not understood the implications of the plea. He also made an oral motion for a competency evaluation. The trial court denied both motions and sentenced Jones to five years’ imprisonment.

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

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In his first two assignments of error, Jones now argues that the trial court erred in overruling his motion to withdraw the guilty plea. We address the assignments together.

A presentence motion to withdraw a guilty plea should be granted freely and liberally, but the defendant must nonetheless provide a reasonable and legitimate basis for withdrawing the plea.<sup>2</sup> A trial court is in the best position to evaluate the legitimacy of the defendant's reasons, and the court's decision to deny a motion to withdraw a plea will not be disturbed absent an abuse of discretion.<sup>3</sup>

In this case, the trial court did not abuse its discretion. Jones was afforded a thorough Crim.R. 11 hearing at which he had assured the court that he understood the proceedings. Only after he had evaded sentencing for six months did he inform the court of his alleged developmental disability. The record indicates that the court fully considered Jones's argument and simply found it to lack merit. Accordingly, we overrule the first and second assignments of error.

In his third assignment of error, Jones argues that the trial court erred in sentencing him to five years' imprisonment. He contends that the trial court disregarded a sentencing agreement and imposed the five-year term to punish him for failing to appear at the first scheduled sentencing hearing.

This argument is without merit. Neither the written plea form nor the transcript of the sentencing hearing reflects an agreed sentence. The trial court had informed Jones of the possible penalties for trafficking in cocaine, and the sentence was within the statutory range for the offense. The third assignment of error is overruled.

In his fourth and final assignment of error, Jones argues that he was denied the effective assistance of trial counsel. Specifically, he argues that counsel was ineffective in

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<sup>2</sup> *State v. Pitts*, 1st Dist. No. C-070500, 2008-Ohio-2057, ¶16.

<sup>3</sup> *Id.*

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failing to investigate the issue of competency and in failing to request a competency evaluation before the entry of the guilty plea.

To establish ineffective assistance of counsel, the defendant must demonstrate that counsel's performance fell below an objective standard of reasonable performance and that prejudice arose from counsel's performance.<sup>4</sup> A defendant demonstrates prejudice by showing that, but for counsel's errors, there was a reasonable probability that the result of the proceeding would have been different.<sup>5</sup> A "reasonable probability" is a probability sufficient to undermine confidence in the outcome of the proceeding.<sup>6</sup>

The assignment is without merit. There is nothing in the record to suggest that counsel had been informed of Jones's alleged disability earlier in the proceedings or that a competency evaluation would have supported Jones's claim that he was disabled. The fourth assignment of error is overruled, and the judgment of the trial court is affirmed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27.

**HILDEBRANDT, P.J., CUNNINGHAM and DINKELACKER, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on February 11, 2009  
per order of the Court \_\_\_\_\_.  
Presiding Judge

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<sup>4</sup> *Strickland v. Washington* (1984), 466 U.S. 668, 686, 104 S.Ct. 2052; *State v. Bradley* (1989), 42 Ohio St.3d 136, 538 N.E.2d 373, paragraphs two and three of the syllabus.

<sup>5</sup> *Strickland*, supra, at 694, 104 S.Ct. 2052.

<sup>6</sup> *Id.*