

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

STATE OF OHIO,	:	APPEAL NO. C-080826
	:	TRIAL NO. B-9608919
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
ROBERT SCHNEIDER,	:	
Defendant-Appellant.	:	

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

Defendant-appellant Robert Schneider presents on appeal a single assignment of error challenging the Hamilton County Common Pleas Court’s judgment overruling his Crim.R. 32.1 motion to withdraw his guilty pleas. We affirm the court’s judgment.

Schneider was convicted in 1997 upon guilty pleas to failure to comply with an order or signal of a police officer, having a weapon while under a disability, and carrying a concealed weapon. The trial court imposed agreed sentences totaling two years, “to run concurrently to any sentence now being served or to be served in the state of Kentucky.” From his convictions, Schneider took no appeal.

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

Instead, in 2008, he filed with the common pleas court a Crim.R. 32.1 motion to withdraw his guilty pleas. In his motion, he asserted that the state had failed “to insure that the benefits of concurrent sentences be afforded defendant in both the State of Ohio and the State of Kentucky,” and thus had failed to secure to him the benefit of his plea bargain, when it had “retained” him in the custody of the Ohio Department of Corrections until he had completed his two-year Ohio sentence, and when Kentucky’s correctional authorities had then declined to credit against his Kentucky sentence the two years served in Ohio. He conceded that Kentucky law did not compel Kentucky to honor his Ohio plea agreement or to credit the time served in Ohio. But, he insisted, Kentucky law would compel the state to credit his Ohio time, and thus a manifest injustice would be corrected, “if the [common pleas court] set[] aside its judgment of conviction and dismis[s]e[d] all charges after permitting [him] to withdraw his plea of guilty.” Thus, he prayed for relief in the form of an order by the common pleas court “setting aside [his] judgment [of] conviction[,] * * * permit[ting] him to withdraw his guilty plea[s,] and * * * dismiss[ing] all the charges.” The common pleas court denied the motion, and this appeal followed.

Crim.R. 32.1 affords relief in the form of an order permitting a defendant to withdraw a guilty plea. But Schneider sought by his motion not merely an order permitting him to withdraw his guilty pleas, but an order dismissing the charges against him. Thus, Schneider sought by his motion relief that Crim.R. 32.1 does not afford. And because the relief that Crim.R. 32.1 does afford would not require Kentucky to credit his Ohio time against his Kentucky time, Schneider failed to demonstrate that withdrawing his guilty pleas was necessary to correct a manifest injustice.

OHIO FIRST DISTRICT COURT OF APPEALS

We, therefore, hold that the common pleas court did not abuse its discretion in overruling Schneider's Crim.R. 32.1 motion. Accordingly, we overrule the assignment of error and affirm the judgment of the court below.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., SUNDERMANN and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on October 28, 2009
per order of the Court _____.
Presiding Judge