

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

STATE OF OHIO,	:	APPEAL NOS. C-081164
	:	C-090412
Plaintiff-Appellee,	:	TRIAL NO. B-0807254-C
vs.	:	<i>JUDGMENT ENTRY.</i>
SEANDELL MCCRARY,	:	
Defendant-Appellant.	:	

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

Seandell McCrary appeals his convictions for aggravated robbery and having a weapon while under a disability. We conclude that his assignments of error do not have merit, so we affirm the judgment of the trial court.

McCrary was indicted for two counts of aggravated robbery, two counts of robbery, and one count of having a weapon while under a disability. The state alleged that on September 6, 2008, McCrary and his brothers, Terrell Dewberry and Norman Dewberry, had approached Israel Evans as he was walking back to a rental car in which David Harrell was sleeping. One of the men hit Evans with a gun. Harrell was awakened by a man pointing a gun in his face. The men took cash, jewelry, and cellular telephones. When Harrell was slow as he removed his earrings to give to the men, Harrell was hit by the gun. The three men then took the rental car. Harrell and Evans identified McCrary and his brothers from a photographic array.

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

McCrary filed a motion to suppress the identification. While the hearing was in progress, McCrary requested that he be taken into the court's jury room so that he could discuss the state's plea offer. McCrary then pleaded guilty to two counts of aggravated robbery with gun specifications and to one count of having a weapon while under a disability. The trial court imposed an agreed sentence of three years' confinement for each count and three years' confinement for one gun specification. The sentences for aggravated robbery and having a weapon while under a disability were concurrent. The aggregate sentence was six years.

McCrary filed a pro se motion to withdraw his plea. The trial court denied the motion. McCrary's counsel also filed a motion to vacate the plea. After a hearing, this motion was also denied. This appeal followed.

In his first assignment of error, McCrary asserts that the trial court erred when it accepted his guilty plea because it was not voluntary, knowing, or intelligent. He contends that he was pressured by his family to accept the plea deal. But his assertion is not supported by the record. At no point during the plea hearing did McCrary indicate that his plea was being made involuntarily.

McCrary also asserts that the trial court did not substantially comply with the dictates of Crim.R. 11 because it misstated the total possible sentence that he faced. But we have held that no prejudice results if the imposed sentence is within the statutory range and does not exceed the misstated potential sentence.² This result is bolstered by the trial court's repeated statement that regardless of what the potential sentence was, the court would impose the agreed sentence of six total years.

McCrary also challenges the validity of his plea because he did not initial the plea form where it stated "Not eligible for Intensive Prison Program, Transitional Control, Judicial Release or other early release." But the court told McCrary that it could not grant him judicial release because the agreed sentence was a mandatory

² *State v. Penny*, 1st Dist. No. C-070447, 2008-Ohio-1952.

six-year term of imprisonment. We conclude that the trial court substantially complied with Crim.R. 11. The first assignment of error is overruled.

In his second assignment of error, McCrary asserts that the trial court erred when it denied his motion to withdraw his plea. To prevail on his post-sentence motion to withdraw his plea, McCrary had to demonstrate a manifest injustice would result if the motion were not granted.³ We review the trial court's determination under an abuse-of-discretion standard.⁴

During the hearing on his motion, McCrary contended that he had been pressured to plead guilty by his family. But we have already determined that his plea was made knowingly, voluntarily, and intelligently. Rather than demonstrating a manifest injustice, the record indicates that McCrary had had a change of heart after pleading guilty. We conclude that the trial court did not abuse its discretion when it denied the motion. The second assignment of error is not well taken.

Therefore, we affirm the trial court's judgment.

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.

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

³ Crim.R. 32.1.

⁴ *State v. Smith* (1977), 49 Ohio St.2d 261, 361 N.E.2d 1324, paragraph two of the syllabus.