

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

STATE OF OHIO,	:	APPEAL NO. C-170412
Plaintiff-Appellee,	:	TRIAL NO. B-1700220-A
vs.	:	<i>JUDGMENT ENTRY.</i>
PRESTON FIELDS,	:	
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 Preston Fields presents on appeal a single assignment of error, challenging the Hamilton County Common Pleas Court’s judgment overruling his motion to withdraw his guilty plea. We overrule the assignment of error and affirm the court’s judgment.

Fields was convicted in 2017 upon his guilty plea to aggravated assault. He did not appeal this conviction, but filed with the common pleas court a postsentence motion to withdraw his plea. The court heard arguments on the motion and overruled it.

A transcript of the proceedings at Fields’s plea hearing was not properly before the common pleas court in deciding his motion to withdraw his guilty plea, because Fields did not appeal his conviction or request that a transcript be prepared for the court’s decision on his motion. A transcript of proceedings was filed after Fields had appealed the judgment overruling his motion to withdraw his plea. But we cannot consider that

transcript, because we may not add to the record and then decide this appeal based on matter that was not before the common pleas court in ruling on the motion. *See State v. Ishmail*, 54 Ohio St.2d 402, 405-406, 377 N.E.2d 500 (1978), paragraph two of the syllabus. *Accord State v. Valdez*, 1st Dist. Hamilton No. C-160437, 2017-Ohio-4260, ¶ 18-21; *State v. Tekulve*, 188 Ohio App.3d 792, 2010-Ohio-3604, 936 N.E.2d 1030 (1st Dist.).

Crim.R. 32.1 permits withdrawal of a guilty or no-contest plea after sentencing “to correct manifest injustice.” The common pleas court’s decision overruling Fields’s motion to withdraw his guilty plea was discretionary. And Fields bore the burden of proving that withdrawal of his guilty plea was necessary “to correct manifest injustice.” *See State v. Smith*, 49 Ohio St.2d 261, 361 N.E.2d 1324 (1977), paragraphs one and two of the syllabus; *State v. Brown*, 1st Dist. Hamilton No. C-010755, 2002-Ohio-5813. Thus, implicit in the court’s decision overruling Fields’s motion was the court’s determination that he had failed to sustain that burden. That determination, in the absence of a transcript of the proceedings at the plea hearing, cannot be said to have been arbitrary, unconscionable, or the product of an unsound reasoning process. *See State v. Darmond*, 135 Ohio St.3d 343, 2013-Ohio-966, 986 N.E.2d 971, ¶ 34 (defining an “abuse of discretion”). We, therefore, hold that the court did not abuse its discretion in overruling the motion.

Accordingly, we affirm the judgment of the common pleas court.

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

CUNNINGHAM, P.J., ZAYAS and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on June 8, 2018
per order of the court _____.

Presiding Judge