

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

STATE OF OHIO,	:	APPEAL NO. C-170514
	:	TRIAL NO. C-17TRC7797-A
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
CHARLIE HOLT,	:	
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 Charlie Holt pled guilty to one count of operating a vehicle under the influence (“OVI”), in violation of R.C. 4511.19(A)(1)(a), and one count of driving under suspension, in violation of R.C. 4510.111. The trial court sentenced Holt to 180 days in jail with credit for ten days served, imposed a \$500 fine and courts costs, and suspended Holt’s driver’s license for three years for the OVI count. The trial court imposed only court costs for the driving-under-suspension count, which it then remitted. Holt moved under Crim.R. 32.1 to withdraw his guilty plea on the OVI count only. The motion was denied following a hearing. This appeal followed.¹

In his sole assignment of error, Holt argues that the trial court committed a manifest injustice when it denied his postsentence motion to withdraw his guilty

¹ Holt originally filed a notice of appeal of the judgment entered on August 22, 2017, the trial court’s sentencing entry. Holt subsequently filed an amended notice to appeal the judgment entered on September 20, 2017, the trial court’s denial of his motion to withdraw his guilty plea.

plea. Holt contends that his guilty plea was not made knowingly, intelligently, or voluntarily because he received ineffective assistance of trial counsel, who Holt claims informed him that he would receive the minimum jail sentence in exchange for his plea, when instead, he received the maximum jail sentence. We review a trial court's denial of a postsentence motion to withdraw a guilty plea under an abuse-of-discretion standard. *State v. West*, 134 Ohio App.3d 45, 50, 730 N.E.2d 388 (1st Dist.1999). In order to find an abuse of discretion, there must be more than an error of judgment; the trial court's ruling must have been unreasonable, arbitrary, or unconscionable. *Id.*

A postsentence motion to withdraw a guilty plea may be granted by the trial court only upon a showing of manifest injustice. Crim.R. 32.1; *West* at 50. A defendant seeking to withdraw a guilty plea after sentence has been imposed has the burden to establish manifest injustice. *State v. Smith*, 49 Ohio St.2d 261, 361 N.E.2d 1324 (1977), paragraph one of the syllabus. "A manifest injustice has been defined as a clear or openly unjust act, evidenced by an extraordinary and fundamental flaw in a plea proceeding." (Internal citations omitted.) *State v. Tekulve*, 188 Ohio App.3d 792, 2010-Ohio-3604, 936 N.E.2d 1030, ¶ 7 (1st Dist.).

As a basis for his motion, Holt argued that he did not fully understand the ramifications of his guilty plea and that there would have been insufficient evidence to convict him had he proceeded to a trial. However, a review of Holt's statements, even if they are taken as truthful, fails to reveal the existence of a manifest injustice. The record shows that the trial court devoted considerable attention to Holt's guilty plea, which was entered without an agreed sentence. The trial court personally informed Holt of the rights he was waiving by pleading guilty, including the right to a jury trial, and of the maximum jail sentence and fines he faced, in accordance with Crim.R. 11.

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The court then postponed sentencing, at Holt's request, to allow for the completion of a presentence report. At the sentencing hearing, wherein the court sentenced Holt to 180 days in jail, Holt informed the court that he was serving a jail sentence on another conviction and would be in jail until January 2018. The sentence imposed by the court in this case was concurrent to the time he already was serving and did not result in any additional jail time.

At the hearing on his motion to withdraw his guilty plea, Holt asserted that his trial counsel had misled him concerning the terms of his plea by claiming that Holt would receive the minimum jail sentence in exchange for his plea, rather than the maximum jail sentence. But these assertions are not otherwise demonstrated and are insufficient as a matter of law to rebut evidence in the record to the contrary on direct appeal. *See State v. Young*, 1st Dist. Hamilton No. C-140236, 2015-Ohio-774, ¶ 12. Accordingly, the allegations in Holt's motion would not have required that his guilty plea be withdrawn. The trial court did not abuse its discretion in denying Holt's motion to withdraw his guilty plea. Therefore, we overrule Holt's sole assignment of error.

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. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., MOCK and MILLER, JJ.

To the clerk:

Enter upon the journal of the court on August 8, 2018

per order of the court _____
Presiding Judge