

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

STATE OF OHIO,	:	APPEAL NO. C-180565
Plaintiff-Appellee,	:	TRIAL NO. B-1702356
vs.	:	<i>JUDGMENT ENTRY.</i>
NATHAN DOWERS,	:	
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 Nathan Dowers was indicted on two counts of rape and two counts of gross sexual imposition. The victim was Dower's niece, who was between five and eight years old and living with him at the time of the offenses. Dowers subsequently entered into a plea agreement with the state. He agreed to plead guilty to one count of gross sexual imposition, and the state agreed to drop both rape counts and the second count of gross sexual imposition. Additionally, the parties agreed to a jointly-recommended sentence of three years in prison. The trial court accepted Dowers's plea and imposed the agreed sentence.

The next day, trial counsel filed a motion to withdraw the guilty plea on Dowers's behalf. In the motion, Dowers claimed that he had been pressured by counsel to enter the plea. The only attachments to the motion were handwritten forms completed by Dowers, which contained his unsworn statements that he didn't feel counsel was on his side and that he had been pressured to enter the plea. The trial court denied the motion without a hearing. In two assignments of error, Dowers now appeals.

In his first assignment of error, Dowers claims that the trial court erred when it denied his motion to withdraw his guilty plea without a hearing. A trial court must hold an evidentiary hearing on a postsentence Crim.R. 32.1 motion if the facts alleged in the motion—accepted as true by the trial court—would require that the plea be withdrawn. *State v. Brown*, 1st Dist. Hamilton No. C-010755, 2002-Ohio-5813, ¶ 20. The decision whether to conduct a hearing on a Crim.R. 32.1 motion is addressed to the trial court’s discretion. *Id.*

In this case, the only corroboration of Dowers’s claims are his own statements in the motions to withdraw the guilty pleas. Generally, a self-serving affidavit or statement is insufficient to demonstrate manifest injustice. *See State v. Hutchison*, 2018-Ohio-200, 104 N.E.3d 91, ¶ 38 (5th Dist.), citing *State v. Patterson*, 5th Dist. Stark No. 2003CA00135, 2004-Ohio-1569, ¶ 20. Dowers presented no evidence that counsel pressured him or that he was innocent. In comparison, this court reversed a decision to deny a postconviction motion to withdraw a guilty plea without a hearing because enough evidence had been presented. *State v. West*, 2017-Ohio-5596, 93 N.E.3d 1221 (1st Dist.). In *West*, the defendant had presented an affidavit from the purported victim recanting the allegations, and there were repeated instances during the plea hearing and after in which the defendant claimed he was innocent. On that record, this court concluded that “the [trial] court abused its discretion in deciding West’s Crim.R. 32.1 motion in a “‘paper hearing[].’” *Id.* at ¶ 40.

We further conclude that the trial court acted properly when it denied Dowers’s motion to withdraw his guilty plea. The decision to deny a motion to withdraw a guilty plea after sentencing can only be reversed if the trial court abused its discretion in failing to find a manifest injustice. *State v. Barfield*, 2017-Ohio-8243, 87 N.E.3d 233, ¶ 4 (1st Dist.). A manifest injustice is a clear and openly unjust act; it relates to a fundamental flaw in the proceedings resulting in a miscarriage of justice or a deprivation of due process. *See State ex rel. Schneider v. Kreiner*, 83 Ohio St.3d 203, 208, 699 N.E.2d 83 (1998). In this case, the only evidence was

Dowers's self-serving statements. The only conclusion that the record supports is that Dowers had a change of heart after having entered his plea. But a "mere change of heart is not a reasonable ground to justify the withdrawal of a guilty plea. This [is] not the extraordinary case where a postsentence motion to withdraw should [be] granted, and the trial court did not abuse its discretion in denying the motion." (Citations omitted.) *State v. Royal*, 1st Dist. Hamilton No. C-160666, 2017-Ohio-4146, ¶ 12.

Nothing in this record supports Dowers's claims that counsel pressured him to enter his plea or that he was innocent of the charge to which he pled guilty. He was not entitled to a hearing. And the trial court did not abuse its discretion when it denied the motion. We overrule Dowers's first assignment of error.

In his second assignment of error, Dowers claims that trial counsel was ineffective for failing to file an adequate motion to withdraw his plea and for allowing him to plead guilty when he was innocent. Counsel presented the only evidence he had available, which was the forms Dowers had completed for the Hamilton County Public Defender's Office. In order to prove that counsel was ineffective, Dowers had to show that but for counsel's performance, the outcome would have been different. Other than stating that the motion was minimal, he points to nothing in the record that counsel should have referenced and does not suggest what additional arguments should have been made. He has failed to establish that, but for counsel's claimed deficient conduct, he would not have entered his plea, the trial court would have granted a hearing on the motion to withdraw the plea, or the trial court would have granted his motion. We overrule the second assignment of error and affirm the judgment of the trial court.

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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.

MOCK, P.J., ZAYAS and WINKLER, JJ.

To the clerk:

Enter upon the journal of the court on November 6, 2019,
per order of the court _____.

Presiding Judge

