No. _____

20-7350

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

_____

ADAM M. DEVORE — PETITIONER
(Your Name)

vs.

STATE OF OHIO — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FIFTH DISTRICT COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Adam M. DeVore A704-923
(Your Name)

1001 Olivesburg Rd.
(Address)

Mansfield, Ohio 44905
(City, State, Zip Code)

N / A
(Phone Number)

QUESTION(S) PRESENTED

The following questions presented involves a post-sentence withdraw of plea for government misconduct:

1) Is the service of a fake indictment ("warrants") and threats to foster a child to induce guilty pleas consistent with the demands of due process guarenteed by the Fourteenth Amendment to the United States Constitution?

2) Does defense counsel's failure to verify the alleged filing of another indictment ("warrants") before convincing a defendant to enter a guilty plea constitute a violation of the Sixth Amendment to the United States Constitution right to the effective assistance of counsel?

3) Does an unwittingly signed waiver of indictment at a change of plea hearing cure the fake indictment inducement when a petitioner was blindly signing numerous documents pointed at by counsel? And is this practice consistent with due process guaraenteed by the Fourteenth Amendment to the United States Constitution as well as the right to the effective assistance of counsel guarenteed by the Sixth Amendment to the United States Constitution?

4) Is the trial court's on record dismissal of "count two" of the subsequent fake indictment coupled with an officer's report affirming service of the fake indictment ("warrants") at the direction of prosecutors sufficient to demonstrate a post-sentence manifest miscarriage of justice when said fake indictment ("warrants") is not anywhere in the record and petitioner did not discover said documents for nearly seven (7) years after entering guilty pleas?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

DAVE YOST

OHIO ATTORNEY GENERAL
30 E. BROAD St.

COLUMBUS, OHIO 43215

TABLE OF AUTHORITIES CITED

TABLE OF CONTENTS

INDEX TO APPENDICES

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[x] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[x] reported at 2020-Ohio-4668; 2020 Ohio App. LEXIS 3532; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[X] For cases from **state courts:**

The date on which the highest state court decided my case was December 29, 2020. A copy of that decision appears at Appendix B.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sixth Amendment to the United States Constitution:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime sahll have been committed, which district shall have been ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the Assistance of Counsel for his defense.

Fourteenth Amendment to the United States Constitution:

(In part) All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privilages or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within it's jurisdiction the equal protection of the law.

STATEMENT OF THE CASE

On Saturday, July 28, 2012, Petitioner, Adam M. DeVore, (hereinafter DeVore or petitioner), was unlawfully seized without probable cause by members of the Mansfield Police Department for alleged cruelty to his (ex) wife and immediately jailed. The following Monday bond was set at 25,000.00 dollars cash. DeVore was appointed Glenda Thompson as defense counsel and a preliminary hearing was scheduled (presumably Monday, August 6, 2012). At the preliminary hearing, immediately prior to DeVore's turn for hearing, counsel Thompson claimed a family emergency, claimed the hearing rescheduled and left. However, the hearing was not rescheduled and DeVore was indicted the following Monday on August 13, 2012 on one count of Domestic Violence.

On Tuesday, August 21, 2012, DeVore was arraigned, entered a plea of not guilty fired counsel Thompson for her abandonment, and was appointed Anica Blazef-Horner (counsel) as defense counsel. Devore advised counsel of his innocence, his wife's lengthy history of deceit, adultry, and her use of the law to gain control over marital situations, hide wrongdoings, and revenge. DeVore also advised counsel that he would not waive his right to speedy trial just so the government could keep him in an indefinite state of limbo and try him at their convenience.

On Monday, September 24, 2012, in an attempt to get DeVore to waive his speedy trial rights, counsel advised DeVore that the government requested to reduce DeVore's unattainable 25,000.00 dollar cash bond to a personal recognizance signature bond. Trick no good. DeVore elected to remain in jail in lieu of being released and having his bond arbitrarily violated and revoked by the government, nullifying DeVore's already incurred sacrifice of pretrial confinement. The government also offered DeVore probation in exchange for a guilty plea, DeVore refused.

On Tuesday, October 9, 2012, fearing speedy trial dismissal or that their victim would change her story to the truth at trial, the government served DeVore

with a fabricated two count indictment, charging Intimidation and Obstruction of Justice (referenced to as filed "warrants," see December 13, 2019 motion to withdraw, exhibit 5.), threatened to jail DeVore's pregnant wife and have their one year old son committed to foster care if DeVore did not cooperate.

Counsel met with DeVore (the next day or) that day shortly after the service of the new indictment to advise him that the government was willing to dismiss the Obstruction charge and still gaurentee community control in exchange for a guilty plea to Domestic Violence and Intimidation and that the new charges reset DeVore;s speedy trial timelines. DeVore advised counsel of the government's threats to his wife and child, where counsel did not doubt the threats and simply advised DeVore that the government would certainly follow through if they did not get the convictions they sought. DeVOre reluctently agreed to convict himself to save his family.

On Friday, October 12, 2012, a change of plea hearing was held. Judge Henson noted the dismissal of count II, Obstruction of Justice on the plea form, indicating his knowledge per prosecutors and defense counsel that the offense had been charged and filed against DeVore. DeVore signed all forms where counsel pointed (as she advised it was all "part of the process") and entered his guilty pleas orally. After the hearing DeVore was released from custody and a pre-sentence investigation was ordered.

On Wednesday, November 21, 2012, a sentencing hearing was held where judge Henson imposed a susended one year term of imprisonment for Domestic Violence and suspended a two year term of imprisonment for Intimidation to be served consecutively and imposed three years of community control as agreed upon by both parties. DeVore was ordered to attend Alcoholics Anonymous dispite the fact that DeVore did not suffer from alcoholism and was forced to attend 21 week of advanced feminist ree-ducation classes (a.k.a the D.O.V.E. Program) that DeVore protested against at every class and in every required essay. Subsequently, DeVore completed community control without receiving any form of reprimand, sanction, or violation dispite his protests

against mass female victimization and feminist law.

On Tuesday, November 26, 2019, DeVore received discovery in an unrelated case where the contents of 2012-CR-0563 and 2012-CR-0742 were included. DeVore began a review of the documents and discovered that no additional charges had actually been filed on October 9, 2012, which induced his pleas, and that only a single count Bill of Information was filed October 11, 2012-one day before the change of plea hearing and two days after officers served DeVore with a falsely manufactured two count indictment.

On Friday, December 12, 2019, DeVore moved to withdraw his guilty pleas due to fraud and other grounds.

On January 27, and 28, 2019, Judge Naumoff (not DeVore's presiding judge) entered a judgment denying DeVore's motions.

On Wednesday, February 12, separate notices of appeals were filed. DeVore later moved for consolidation. The appellate court consolidated the cases and on September 30, 2020, affirmed the trial court.

DeVore sought discretionary review in the Ohio Supreme Court. On December 29, 2020, the Ohio Supreme Court declined to accept jurisdiction.

DeVore now seeks review in the United States Supreme Court.

REASONS FOR GRANTING THE PETITION

In accordance with Supreme Court Rule 10(b), the Ohio Fifth District Court of Appeals has decided an important federal question of a knowing, intelligent, and voluntary guilty plea in a way that conflicts with the United States Fourth Circuit Court of Appeals in **United States v. Fisher**, 711 F.3d 460.

In **Fisher**, the Fourth Circuit held that:

> "In have his plea vacated, in addition to showing impermissable government conduct, Defendant must show that the misconduct induced him to plead guilty. **Brady v. United States**, 397 U.S. at 755. In other words, Defendant must show "a reasonable probability that, but for the misconduct, he would not have pleaded guilty and would have insisted on going to trial." **Herrera**, 456 F.3d at 294 (citation omitted). Courts take an objective approach to determining reasonable probability. Id. Thus, Defendant must show that a reasonable defendant standing in his shoes likely would have altered his decision to plead guilty, had he known about [the] misconduct." Change added.

Petitioner's guilty pleas were fraudulently induced by the service of a fake indictment ("warrants") on October 9, 2012, charging petitioner with two (2) new offenses -- obstruction of justice, O.R.C. 2921.21, and intimidation, O.R.C. 2921.04 (B). Because no real indictment exists pertaining to the above charges there is nothing in the record except the police report (defense exhibit 5) that affirms the service of new charges on October 9, 2012. It was only after petitioner agreed through defense counsel on October 10, 2012, to plead guilty to his original charge of domestic violence, O.R.C. 2919.25(A), and one of the new charges (intimidation) in the fake indictment that the State filed a single count bill of information on October 11, 2012, charging intimidation. For the past near eight (8) years (seven (7) years at the time of discovery) petitioner had no knowledge of any bill of information. Only knowledge of the fake indictment (that he thought was read) that was served on him on October 9, 2012, approximately seventeen (17) days before speedy trial dismissal for his original charge of domestic violence.

Compounding petitioner's stress of this new (fake) indictment was the advisement from his (ex) wife the night of October 9, 2012, that prosecutors (or police)

had told her that if she did not come to trial that she would be arrested and they would put our one (1) year old son in to foster care. Petitioner advised his counsel of this threat on the 10th and counsel nevertheless affirmed the threat and fostering as a consequence if petitioner did not enter a plea as the State wanted to eliminate the possibility of a no show or acquittal. Petitioner reluctenly entered guilty pleas to crimes he did not commit to save his family from the disaster the government was willing to create for a conviction at any cost. The State has never denied the forewgoing allegations.

Notably, not once in the appellate court's opinion analysis does court mention service of charges on October 9, 2012. Instead, it is entirely evaded in favor of asserting that petitioner unwittingly signed a waiver of indictment at the October 12, 2012 change of plea hearing. However, the fact is is that petitioner blindly signed numerous documents at the plea hearing because his counsel pointed and said "sign here." However, the appellate court's assertion is belied by judge Henson's notation on the change of plea form, in case no. 12-CR-742, that count two (2) is dismissed. Because "count two" never existed in the October 11, 2012 bill of information it is obvious that the judge was going by the verbal representation of both State and defense counsel when he made said notation at the change of plea hearing.

the appellate court went on to claim petitioner's delay in filing as "problematic." However, neither the court not the State, in any filing, ever presented any factual basis or alleged prejudice that the timing of petitioner's motion presented a problem. In fact, as explained in petitioner's State filings petitioner did not "wait" to file his plea withdraw motion. Petitioner did not discover the one (1) count bill of information and police report until counsel provided discovery in an unrelated case in late November 2019. Petitioner's motion to withdraw was filed within three (3) weeks on December 12, 2019. There was no delay in filing, only a delay between the time the pleas were entered and the time petitioner discovered the police report and bill of information that exposed fraudulent and im-

permissable government conduct.

The appellate court purposely misinterpreted petitioner's grounds to withdraw his pleas and then journalized that misinterpretation. The appellate court stated" "[W]e find appellant's argument that his plea was in effect not voluntary because it was induced by appellee's decision to drop or not indict upon a count of obstruction is insufficient to demonstrate a manifest injustice." This was not the basis of petitioner's argument.

Petitioner's grounds (or argument) for withdrawal are that he was served with a fake two (2) count indictment ("warrants") on October 9, 2012 -- two (2) days before any additional charges were actually filed -- which gave petitioner a bona-fide belief that he had again been indicted. And that defense counsel affirmed that belief on the 10th without confirmation through the clerk of any additionally filed charges and encouraged petitioner to accept a plea offer from the State that included the dismissal of one (1) of the newly indicted offenses. When, in fact, on October, 9, 10, 11, 12, through the present three existed no new indictment ["warrants") of any kind. Only a bill of information filed after inducement.

Defense counsel's misrepresentation to petitioner and obvious collusion in the State's impermissable conduct of serving fake process to induce a plea was done to avoid a trial that petitioner has insisted on from the moment of arrest. Petitioner refused to bond out on a personal recognizance bond, reduced at the State's request, from a twenty-five thousand (25,000.00) dollae cash bond. The State desparately wanted more time to prosecute a weak case, and because petitioner would not take the bait of a bond that would likely be arbitrarily revoked, the State served petitioner a fake indictment ("warrants"), got petitioner to agree to terms of an offer through counsel, then filed a bill of information which was never disclosed to petitioner, then had counsel slip in the stack of papers for signing a waiver of indictment and represented to the trial court that "count two" was being dismissed when, in fact. "count two" was never filed! The appellate court's "more

likely explanation" of what happened in this case is not compatable with the trial court's change of plea form in case no. 12-CR-742, nor is it compatable with the October 9, 2012 police report that states "[p]er prosecutor Pigg, felony warrants for intimidtion and obstructing justice were completed and served upon OFI at the incident location."

The Fifth District's holding is also contrary to **Brady v. United States**, 397 U.S. 742; **Boykin v. Alabama**, 395 U.S. 238; **Shelton v. United States**, 356 U.S. 26; **McMann v. Richardson**, 397 U.S. 759, 770; **Strickland v. Washington**, 446 U.S. 668; **White v. Maryland**, 373 U.S. 59; **Arsenault v. Massechusetts**, 393 U.S. 5; and **United States ex rel. Elksnis v. Gilligan**, 256 F. Supp. 244 (S.D.N.Y. 1966).

Petitioner's pleas were not knowing, intelligent, and voluntary because, at the time he entered the pleas, he believed he was under a new two (2) count indictment served October 9, 2012, when, in fact, there was never a new indictment. Had petitioner known that the indictment ("warrants") served upon him on October 9, 2012 were fake he would have brought it to the attention of the trial court, requested dismissal of all charges with prejudice, and requested the court sanction both State's and defense counsel and submit their conduct to the Disciplinary Counsel of the Ohio Supreme Court, or request to go to trial on the original charge of domestic violence only if the trial court would not dismiss. However, both cases could easily have been beat with effective counsel.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Adam M. DeVore A704-923
Richland Correctional Inst.
1001 Olivesburg Rd.
Mansfield, Ohio 44905

Date: 2/5/21

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

ADAM M. DEVORE

Defendant-Appellant

JUDGMENT ENTRY

Case No. 20CA21
20CA22

For the reasons stated in our accompanying Opinion on file, the judgment of the Richland County Court of Common Pleas is affirmed. Costs assessed to appellant.

Patricia A. Delaney
HON. PATRICIA A. DELANEY

William B. Hoffman
HON. WILLIAM B. HOFFMAN

W. Scott Gwin
HON. W. SCOTT GWIN

CERTIFICATE OF SERVICE
I hereby certify that a true and correct copy of the foregoing was served according to appellate rules and by
☒ Regular Mail.
☐ Placed in Counsel's box in Clerk of Courts
this 30 day of Sept. 2020
Black
Clerk of Courts

cc: Adam DeVore
Joseph Snyder

Appx. A

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	
	:	Hon. William B. Hoffman, P.J.
Plaintiff-Appellee	:	Hon. W. Scott Gwin, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 20CA21
	:	20CA22
ADAM M. DEVORE	:	
	:	
	:	
Defendant-Appellant	:	OPINION

CHARACTER OF PROCEEDING: Appeal from the Richland County Court of Common Pleas, Case Nos. 12CR563 and 12CR742

JUDGMENT: AFFIRMED

DATE OF JUDGMENT ENTRY:

APPEARANCES:

For Plaintiff-Appellee:

GARY BISHOP
RICHLAND CO. PROSECUTOR
JOSEPH C. SNYDER
38 South Park St.
Mansfield, OH 44902

For Defendant-Appellant:

ADAM DEVORE, PRO SE
Inmate No. A704-923
Richland Correctional Institution
P.O. Box 8107
Mansfield, OH 44905

RULE 58 (B) NOTICE
THIS JUDGMENT WAS ENTERED ON THE COURT'S JOURNAL
ON 9-30-20
BY JBlack
Richland County Clerk of Courts
Deputy Clerk

Delaney, J.

{¶1} This is a consolidated appeal from two judgment entries of the Richland County Court of Common Pleas, both overruling appellant's motion to withdraw his guilty pleas: the Order on Pending Motions of January 27, 2020 [case number 12-CR-742] and Order on Pending Motions of January 28, 2020 [case number 12-CR-563]. Appellee is the state of Ohio.

FACTS AND PROCEDURAL HISTORY

{¶2} On August 13, 2012, appellant was charged by indictment with one count of domestic violence pursuant to R.C. 2919.25(A), a felony of the fourth degree [Richland County Court of Common Pleas case number 12-CR-0563].

{¶3} On October 11, 2012, appellant was charged by bill of information with one count of intimidation pursuant to R.C. 2921.04(B), a felony of the third degree [Richland County Court of Common Pleas case number 12-CR-0742].

{¶4} On or around October 15, 2012, appellant entered pleas of guilty in both cases. We note that in the Admission of Guilt/Judgment Entry dated October 15, 2012, in case number 12-CR-742, the entry notes "Dismiss: Obstructing Justice, Count II, 2921.32, F-5."

{¶5} We further note that on October 15, 2012, the day he entered his guilty pleas, appellant signed a Waiver of One-Day Service of the bill of information and a Waiver of Indictment. The Summons upon the bill of information states "to be served in court."

{¶6} On November 21, 2012, the trial court sentenced appellant to a term of community control. The record indicates appellant's period of community control was successfully terminated on August 27, 2014.

{¶7} On December 12, 2019, appellant filed motions to consolidate both cases and to withdraw his pleas of guilty. Appellant asserts he received ineffective assistance of trial counsel during his guilty pleas because he was told his pleas of guilty were in exchange for dismissal of "Obstructing Justice, Count II" when in fact there is no Count II in the October 11, 2012 Bill of Information.

{¶8} Appellant further cites a police report dated October 9, 2012, describing incidents of appellant allegedly harassing the victim in telephone calls from the Richland County Jail. In pertinent part, the report states, "Per Prosecutor Pigg, Felony Warrants for Intimidation and Obstructing Justice were completed and served upon [appellant], at the incident location."

{¶9} Appellee responded with a memorandum in opposition and appellant replied. The trial court overruled appellant's motion to withdraw his guilty pleas on January 27, 2020.

{¶10} Appellant now appeals from the trial court's Judgment Entry of January 27, 2020.

{¶11} Appellant raises one assignment of error:

ASSIGNMENT OF ERROR

{¶12} "THE TRIAL COURT ERRED TO THE PREJUDICE OF DEVORE BY ABUSING ITS DISCRETION AND MAKING UNREASONABLE FACTUAL FINDINGS IN OVERRULING DEVORE'S CRIM.R. 32.1 MOTION TO WITHDRAW GUILTY PLEAS WITHOUT A HEARING."

ANALYSIS

{¶13} In his sole assignment of error, appellant argues the trial court should have permitted him to withdraw his pleas of guilty because he was not charged with obstructing justice as referenced in the Admission of Guilt/Judgment Entry of October 15, 2012. We disagree.

{¶14} Appellant did not appeal from his conviction and sentence; this appeal arose from appellant's post-sentence motion to withdraw his guilty pleas. A motion to withdraw plea is governed by the standards set forth in Criminal Rule 32.1, which provides that a trial court may grant a defendant's post-sentence motion to withdraw a guilty plea only to correct a manifest injustice. Therefore, "[a] defendant who seeks to withdraw a plea of guilty after the imposition of sentence has the burden of establishing the existence of manifest injustice." *State v. Smith,* 49 Ohio St.2d 261, 361 N.E.2d 1324 (1977). Although no precise definition of "manifest injustice" exists, in general, "manifest injustice relates to some fundamental flaw in the proceedings which result in a miscarriage of justice or is inconsistent with the demands of due process." *State v. Walsh*, 5th Dist. Licking No. 14-CA-110, 2015-Ohio-4135, ¶ 16, citing *State v. Wooden,* 10th Dist. Franklin No. 03AP–368, 2004–Ohio–588. Under this standard, a post-sentence withdrawal motion

is allowable only in extraordinary cases. *State v. Smith,* 49 Ohio St.2d 261, 361 N.E.2d 1324 (1977).

{¶15} A defendant seeking to withdraw a post-sentence guilty plea bears the burden of establishing manifest injustice based on specific facts contained in the record or supplied through affidavits attached to the motion. *Walsh*, supra, 2015-Ohio-4135 at ¶ 16, citing *State v. Graham,* 5th Dist. Delaware No. 12 CAA 11 0082, 2013–Ohio–600.

{¶16} In the instant case, appellant provided his own affidavit stating in pertinent part that while he was incarcerated and awaiting trial on the domestic violence charge, he was served with a "paper" by a Mansfield police officer describing a charge of intimidation and a charge of obstruction of justice. Appellant states, "Said paper appeared to be another indictment if recollection serves to be correct." Affidavit ¶ 2. Appellant acknowledges that he was arraigned and entered guilty pleas on October 12, 2012 to one charge of domestic violence and one charge of intimidation. Appellant further asserts that he changed his pleas to guilty in exchange for appellee dropping the nonexistent count of obstruction. Affidavit ¶ 4.

{¶17} We have often observed a self-serving affidavit or statement is generally insufficient to demonstrate manifest injustice. *State v. Patterson*, 5th Dist. Stark No. 2003CA00135, 2004-Ohio-1569, 2004 WL 615751, ¶ 20.

{¶18} Moreover, even assuming appellant's factual assertions are correct, he has failed to demonstrate manifest injustice. His argument overlooks the fact that he waived indictment and one-day service, and was charged in the latter intimidation case via a bill of information. As the trial court pointed out in the decision overruling the motion to withdraw the guilty pleas, "[a] bill of information allows a defendant and the State to enter

a plea bargain prior to charges actually being filed as a bill of information requires the defendant to waive the right to be indicted by grand jury." Jan. 28, 2020 Entry, 2. Appellant claims he was tricked by his own counsel and the prosecutor into pleading guilty to avoid a non-existent charge. The more likely explanation is that if appellant had not agreed to plead to the bill of information, the bill would have been withdrawn and appellee would have sought indictment upon one count of intimidation and one count of obstruction.

{¶19} Further, we fail to see how these facts create a manifest injustice such that a fundamental flaw occurred in the proceedings resulting in a miscarriage of justice, or is inconsistent with the demands of due process. See, *State v. Walsh*, 5th Dist. Licking No. 14-CA-110, 2015-Ohio-4135, supra, at ¶ 16. Appellant entered pleas of guilty, and was convicted, upon two counts instead of three. He avoided a fifth-degree felony count of obstruction of justice. By appellant's own admissions in the police report attached to his motion, he could have been indicted upon separate counts for each phone call he made to the victim threatening her or advising her not to testify.

{¶20} The lengthy delay in filing of appellant's motion to withdraw guilty pleas is also problematic. As noted supra, appellant successfully completed his term of community control in 2014. Five years later, he filed the motion to withdraw his guilty pleas. The length of passage of time between the entry of a plea and a defendant's filing of a Crim. R. 32.1 motion is a valid factor in determining whether a "manifest injustice" has occurred. *State v. Lane*, 5th Dist. Richland No. 03-CA-89, 2004-Ohio-2235, ¶19, citing *State v. Copeland-Jackson,* Ashland App. No. 02COA018, 2003-Ohio-1043.

{¶21} A reviewing court will not disturb a trial court's decision whether to grant a motion to withdraw a plea absent an abuse of discretion. *State v. Caraballo*, 17 Ohio St.3d 66, 477 N.E.2d 627 (1985). In order to find an abuse of discretion, we must determine that the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 450 N.E.2d 1140 (1983). In the instant case, we find no abuse of discretion by the trial court.

{¶22} We find appellant's argument that his plea was in effect not voluntary because it was induced by appellee's decision to drop or not indict upon a count of obstruction is insufficient to demonstrate manifest injustice. See *Lane*, supra, 5th Dist. Richland No. 03-CA-89, 2004-Ohio-2235, at ¶ 19. As to appellant's argument that the trial court should have held a hearing on the motion, "[a] hearing on a post-sentence Crim.R. 32.1 motion is not required if the facts alleged by the defendant and accepted as true by the trial court would not require the court to permit a guilty plea to be withdrawn." *Id.* The trial court in the instant case therefore did not abuse its discretion in failing to hold a hearing upon appellant's motion.

{¶23} Finally, appellant's allegations of ineffective assistance of counsel are not appropriately raised in a motion to withdraw guilty pleas.

{¶24} Appellant negotiated a sentence of community control before entering the guilty pleas. Counsel at all times represented appellant. Appellant was sentenced in accordance with his agreement. Appellant has not explained why he waited over five years after he entered his plea before filing his motion to withdraw the pleas. *State v. Lathan*, 5th Dist. Guernsey No. 09-CA-42, 2010-Ohio-4540, ¶ 42, appeal not allowed, 127

Ohio St.3d 1534, 2011-Ohio-376, 940 N.E.2d 987. The trial court did not abuse its discretion in overruling appellant's motion to withdraw his pleas of guilty.

{¶25} Appellant's sole assignment of error is therefore overruled and the judgment of the Richland County Court of Common Pleas is affirmed.

CONCLUSION

{¶26} Appellant's sole assignment of error is overruled and the judgment of the Richland County Court of Common Pleas is affirmed.

By: Delaney, J.,

Hoffman, P.J. and

Gwin, J., concur.

Patricia A. Delaney

HON. PATRICIA A. DELANEY

William B. Hoffman

HON. WILLIAM B. HOFFMAN

W. Scott Gwin

HON. W. SCOTT GWIN

The Supreme Court of Ohio

State of Ohio

v.

Adam DeVore

Case No. 2020-1303

ENTRY

Upon consideration of the jurisdictional memoranda filed in this case, the court declines to accept jurisdiction of the appeal pursuant to S.Ct.Prac.R. 7.08(B)(4).

(Richland County Court of Appeals; Nos. 20CA21 and 20CA22)

Maureen O'Connor
Chief Justice

CC: Adam DeVore
Gary Bishop

Appx. B