

COURT OF APPEALS OF OHIO, THIRD APPELLATE DISTRICT, DEFIANCE COUNTY

State v. Perez

2026-Ohio-1812 · No. 4-25-19 · Decided May 18, 2026

SUMMARY

The Ohio Third District Court of Appeals affirmed the denial of Orlando Perez Jr.'s post-sentence motion to withdraw his guilty pleas. The court held that Perez's claims concerning misinformation about Major Drug Offender specifications and ineffective assistance of counsel were barred by res judicata because they could have been raised in his direct appeal. The court concluded that the trial court did not abuse its discretion under Ohio Criminal Rule 32.1.

CASE DETAILS

COURT	Court of Appeals of Ohio, Third Appellate District, Defiance County
WRITING FOR THE COURT	William R. Zimmerman, P.J.; Mark C. Miller, J.; John R. Willamowski, J.
JURISDICTION	Ohio Court of Appeals, Third Appellate District, Defiance County
DECIDED	May 18, 2026
DOCKET	4-25-19
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed the denial of his post-sentence motion to withdraw guilty pleas under Ohio Criminal Rule 32.1.
STANDARD OF REVIEW	Denial of a motion to withdraw a guilty plea is reviewed for abuse of discretion; an abuse of discretion is a decision that is unreasonable, arbitrary, or unconscionable.
PRECEDENTIAL VALUE	Published Ohio Court of Appeals opinion
PARTIES	Orlando Perez Jr. v. State of Ohio

TOPICS

- post-conviction relief
- plea bargaining
- ineffective assistance
- criminal procedure
- appellate procedure

PRACTICE AREAS

criminal procedure

post-conviction relief

plea withdrawal

ineffective assistance of counsel

Ohio appellate procedure

QUESTIONS PRESENTED

1. Whether res judicata barred Perez's post-sentence Crim.R. 32.1 claims that his guilty pleas were defective because of alleged misinformation about Major Drug Offender specifications.
2. Whether res judicata barred Perez's ineffective-assistance-of-counsel claim based on matters contained in the trial record.
3. Whether the trial court abused its discretion by denying Perez's post-sentence motion to withdraw his guilty pleas.

HOLDINGS

1. Res judicata bars claims raised in a Crim.R. 32.1 post-sentence motion when the claims were or could have been raised on direct appeal. Because Perez's defective-plea and ineffective-assistance claims were rooted in the trial record and could have been raised on direct appeal, he could not raise them in his post-sentence motion.
2. The trial court did not abuse its discretion by denying Perez's post-sentence motion to withdraw his guilty pleas because his claims were barred by res judicata.

KEY QUOTATIONS

“A motion to withdraw a plea of guilty or no contest may be made only before sentence is imposed; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his or her plea.” (¶ 8)

“A manifest injustice is a clear or openly unjust act and relates to a fundamental flaw in the plea proceedings resulting in a miscarriage of justice.” (¶ 8)

“a postsentence withdrawal motion is allowable only in extraordinary cases.” (¶ 8)

“Res judicata bars the assertion of claims against a judgment of conviction in a motion under Crim.R. 32.1 when those claims were or could have been raised on direct appeal.” (¶ 9)

FACTUAL BACKGROUND

In January 2017, Perez was convicted of two first-degree felony counts of trafficking in cocaine and sentenced to an aggregate fourteen-year prison term. He later argued that his guilty pleas were not knowing, intelligent, and voluntary because the trial court allegedly misstated the potential maximum penalties for Major Drug Offender specifications at arraignment. He also claimed ineffective assistance because trial counsel failed to correct the alleged misstatement and failed to ensure that the pleas were knowing, intelligent, and voluntary.

PROCEDURAL HISTORY

Perez pleaded guilty to two counts of trafficking in cocaine and received an aggregate fourteen-year prison sentence. The court of appeals affirmed his conviction and sentence on direct appeal. After several unsuccessful post-conviction motions, Perez filed a post-sentence motion to withdraw his guilty pleas, which the trial court denied after a hearing; the trial court also denied reconsideration. The court of appeals affirmed.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The cause was remanded to the trial court for execution of the judgment for costs. The clerk was directed to certify the judgment entry and opinion to the trial court as the mandate under App.R. 27 and serve copies on the parties under App.R. 30.

CASES CITED

- State v. Perez, 2018-Ohio-635 (3d Dist.)
- State v. Streeter, 2009-Ohio-189, ¶¶ 12-13 (3d Dist.)
- State v. Adams, 62 Ohio St.2d 151, 157-158 (1980)
- State v. Straley, 2019-Ohio-5206, ¶¶ 14, 23
- State v. Smith, 49 Ohio St.2d 261, 264 (1977)
- State v. Cagle, 2020-Ohio-316, ¶ 4 (9th Dist.)
- State v. Cartlidge, 2021-Ohio-3787, ¶¶ 9, 11 (3d Dist.)
- State v. Price, 2024-Ohio-5823, ¶¶ 16, 19-20 (10th Dist.)

OPINION

State v. Perez

2026 Ohio 1812

PER CURIAM.

[Cite as State v. Perez, 2026-Ohio-1812.]

IN THE COURT OF APPEALS OF OHIO

THIRD APPELLATE DISTRICT

DEFIANCE COUNTY

STATE OF OHIO, CASE NO. 4-25-19

PLAINTIFF-APPELLEE,

v.

ORLANDO PEREZ JR., OPINION AND

JUDGMENT ENTRY

DEFENDANT-APPELLANT. Appeal from Defiance County Common Pleas Court Trial Court No. 16 CR 12613 Judgment Affirmed Date of Decision: May 18, 2026 APPEARANCES: Orlando

Perez Jr., Appellant Russell R. Herman for Appellee Case No. 4-25-19 ZIMMERMAN, P.J. {¶1} Defendant-appellant, Orlando Perez Jr. (“Perez”), pro se, appeals the November 13, 2025 judgment entry of the Defiance County Court of Common Pleas denying his post-sentence motion to withdraw his guilty pleas. For the reasons that follow, we affirm. {¶2} In January 2017, Perez was convicted of two counts of trafficking in cocaine in violation of R.C. 2925.03(A)(1), (C)(4)(f) and (g), respectively, both first-degree felonies. The trial court sentenced Perez to an aggregate 14 year prison term. *State v. Perez*, 2018-Ohio-635, ¶ 3 (3d Dist.). Perez directly appealed the trial court’s judgment entry of sentence.¹ In his direct appeal, this court affirmed his conviction and sentence. *Id.* at ¶ 11. {¶3} Following his direct appeal, Perez, pro se, filed several post-conviction motions, asserting ineffective assistance of counsel arguments related to his guilty pleas and arguments that his sentence is void or voidable. These motions were denied by the trial court.² {¶4} On August 13, 2025, Perez, represented by counsel, filed a motion to withdraw his guilty pleas under Crim.R. 32.1. The State filed a memorandum in 1 In Perez’s direct appeal from his convictions and sentence, this court recited much of the factual and procedural background of this case, and we will not duplicate those efforts here. See *State v. Perez*, 2018- Ohio-635 (3d Dist.). 2 Perez’s appeal from the trial court’s denial of his petition for post-conviction relief in 2019 was dismissed by this court. -2- Case No. 4-25-19 opposition to Perez’s motion on August 21, 2025. After a hearing on November 6, 2025, the trial court denied Perez’s motion on November 13, 2025. Perez, pro se, filed a motion for reconsideration on November 20, 2025, which the trial court denied on November 21, 2025. {¶5} On December 8, 2025, Perez filed his notice of appeal. He raises four assignments of error for our review, which we will review together. First Assignment of Error The trial court erred by applying *res judicata* to bar Appellant’s Crim.R. 32.1 motion, where misinformation of law rendered the plea constitutionally void. Second Assignment of Error The trial court erred by finding the plea knowing, voluntary, and intelligent despite undisputed evidence that Appellant relied on misinformation concerning the Major Drug Offender specifications. Third Assignment of Error The trial court abused its discretion in denying the motion despite uncontroverted evidence of manifest injustice. Fourth Assignment of Error Appellant received ineffective assistance of counsel where trial counsel failed to correct the court’s misstatements of law regarding the MDO specifications, failed to investigate the statute, and failed to ensure the plea was knowing, voluntary, and intelligent. {¶6} In his assignments of error, Perez argues that the trial court erred by denying his post-sentence motion to withdraw his guilty pleas. Specifically, Perez -3- Case No. 4-25-19 argues that his guilty pleas were not made knowingly, intelligently, and voluntarily because, at the time of his initial arraignment, the trial court misinformed him of the potential maximum penalties for the Major Drug Offender specifications. He further argues that his trial counsel provided ineffective assistance by failing to correct this misstatement. Standard of Review {¶7} “Appellate review of the trial court’s denial of a motion to withdraw a guilty plea is limited to whether the trial court abused its discretion.” *State v. Streeter*, 2009-Ohio-189, ¶ 12 (3d Dist.). An abuse of discretion suggests the trial court’s decision is

unreasonable, arbitrary, or unconscionable. *State v. Adams*, 62 Ohio St.2d 151, 157-158 (1980). Analysis {¶8} Crim.R. 32.1 provides, “A motion to withdraw a plea of guilty or no contest may be made only before sentence is imposed; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his or her plea.” “The party moving to withdraw the plea of guilty bears the burden of establishing a manifest injustice.” *Streeter* at ¶ 13. A manifest injustice is a clear or openly unjust act and relates to a fundamental flaw in the plea proceedings resulting in a miscarriage of justice. *State v. Straley*, 2019-Ohio-5206, ¶ 14. “[A] postsentence withdrawal motion is allowable only in extraordinary cases.” *State v. Smith*, 49 Ohio St.2d 261, 264 (1977). -4- Case No. 4-25-19 {¶9} “Res judicata bars the assertion of claims against a judgment of conviction in a motion under Crim.R. 32.1 when those claims were or could have been raised on direct appeal.” *State v. Cagle*, 2020-Ohio-316, ¶ 4 (9th Dist.). See also *Straley* at ¶ 14. “An exception to the res judicata bar is when the defendant raises claims that were not available on appeal because they are based on evidence outside the record.” *State v. Cartlidge*, 2021-Ohio-3787, ¶ 9 (3d Dist.). Thus, “[t]o overcome the res judicata bar, the defendant must provide new evidence that was not a part of the original record” *Id.* {¶10} Here, even though Perez directly appealed his conviction and sentence, he failed to challenge the propriety of his guilty pleas or the effectiveness of his trial counsel in his direct appeal. See *Straley* at ¶ 23 (“*Straley* could have challenged his guilty plea on direct appeal.”); *State v. Price*, 2024-Ohio-5823, ¶ 16 (10th Dist.) (asserting that res judicata bars an ineffective assistance of counsel claim in a post-sentence Crim.R. 32.1 motion if it could have been raised on direct appeal). Critically, Perez’s defective plea argument and his claim of ineffective assistance of trial counsel could have been raised in his direct appeal since his arguments in support of those claims are firmly rooted in the trial record. Thus, “the claim could have been fairly determined without resort to evidence outside the record in that direct appeal.” *Price* at ¶ 19. {¶11} Consequently, because Perez could have raised his arguments in his direct appeal, his arguments are barred by the doctrine of res judicata and he cannot -5- Case No. 4-25-19 now raise them in a post-sentence motion to withdraw his guilty pleas. Accord *Cartlidge* at ¶ 11; *Price* at ¶ 20. As a result, the trial court did not abuse its discretion by denying Perez’s motion to withdraw his guilty pleas. {¶12} Perez’s assignments of error are overruled. {¶13} Having found no error prejudicial to the appellant herein in the particulars assigned and argued, we affirm the judgment of the trial court. Judgment Affirmed MILLER and WILLAMOWSKI, J.J., concur. -6- Case No. 4-25-19

JUDGMENT ENTRY

For the reasons stated in the opinion of this Court, the assignments of error are overruled and it is the judgment and order of this Court that the judgment of the trial court is affirmed with costs assessed to Appellant for which judgment is hereby rendered. The cause is hereby remanded to the trial court for execution of the judgment for costs. It is further ordered that the Clerk of this Court certify a copy of this Court’s judgment entry and opinion to the trial court as the mandate prescribed by App.R. 27; and serve a copy of this Court’s judgment entry and opinion on each

party to the proceedings and note the date of service in the docket. See App.R. 30. William R. Zimmerman, Judge Mark C. Miller, Judge John R. Willamowski, Judge DATED: /hls -7-

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