

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

STATE OF OHIO,	:	APPEAL NO. C-170421
	:	TRIAL NO. B-1504083
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
SAMUEL 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 Samuel Fields pled guilty to one count of aggravated robbery, in violation of R.C. 2911.01(A)(1), with a firearm specification, in violation of R.C. 2941.145, and one count of having a weapon while under a disability, in violation of R.C. 2923.13(A)(2). The trial court sentenced him to six years in the Ohio Department of Corrections. Fields made a motion under Crim.R. 32.1 to withdraw his guilty pleas. The motion was denied. This appeal followed.

In his first assignment of error, Fields argues that the trial court erred by not granting him a hearing on his motion to withdraw his guilty plea. “The decision of whether to conduct a hearing on a Crim.R. 32.1 motion to withdraw a plea is discretionary with the trial court and will not be disturbed unless the court has abused its discretion.” *State v. Brown*, 1st Dist. Hamilton No. C-010755, 2002-Ohio-5813, ¶

20. A post-sentence motion to withdraw a guilty plea may be granted by the trial court only upon a showing of manifest injustice. *State v. West*, 134 Ohio App.3d 45, 50, 730 N.E.2d 388 (1st Dist.1999). The trial court is not required to conduct an oral hearing on the motion. *State v. Blatnik*, 17 Ohio App.3d 201, 478 N.E.2d 1016 (1984). 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.

Here, Fields merely alleged his innocence in his motion. The motion did not allege any facts to support his claim of innocence. Neither did Fields suggest a manifest injustice had occurred, at his sentencing hearing for instance. Accordingly, the allegations in Field's motion would not have required that his guilty pleas be withdrawn. The trial court did not abuse its discretion in declining to conduct a hearing on the motion. Therefore, we overrule Fields's first assignment of error.

In his second assignment of error, Fields contends that he was denied the effective assistance of counsel guaranteed under the Sixth Amendment to the United States Constitution. Fields attempted to support this assignment of error by attaching an affidavit to the appellate brief filed with this court. We are bound by the record below and do not consider the affidavit as part of the record for our review. *See App.R. 9(A); Middletown v. Allen*, 63 Ohio App.3d 443, 579 N.E.2d 254 (12th Dist.1989) (holding that affidavits attached to an appellate brief cannot be considered as part of the record on appeal).

To establish ineffective assistance of counsel, the defendant must demonstrate that he was prejudiced by counsel's deficient performance. *See Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 143, 538 N.E.2d 373 (1989). To show

prejudice, Fields must prove that, but for counsel's errors, he would not have entered guilty pleas and would have insisted on going to trial. *See Hill v. Lockhart*, 474 U.S. 52, 60, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985); *State v. Xie*, 62 Ohio St.3d 521, 524, 584 N.E.2d 715 (1992). We are unable to determine on appeal whether ineffective assistance of counsel occurred because the allegations of ineffectiveness are based on facts outside the record. *See State v. Cooperrider*, 4 Ohio St.3d 226, 228, 448 N.E.2d 452 (1983); *State v. Coleman*, 85 Ohio St.3d 129, 134, 707 N.E.2d 476 (1999). Therefore, we overrule Field's second assignment of error.

In his third assignment of error, Fields argues that the trial court erred in sentencing him to the maximum term for possessing a weapon while under a disability. "A sentence imposed upon a defendant is not subject to review * * * if the sentence is authorized by law, has been recommended jointly by the defendant and the prosecution in the case, and is imposed by a sentencing judge." R.C. 2953.08(D)(1). Here, Fields agreed to a six-year aggregate sentence as part of his pleas, and the sentencing judge explained the terms of the sentence at the sentencing hearing. Additionally, the three-year sentence for possessing a weapon while under a disability was within the statutory sentencing range for the third-degree felony offense. R.C. 2929.14(A)(3)(b); R.C. 2923.13(B). Therefore, we overrule Fields's third 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.

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

OHIO FIRST DISTRICT COURT OF APPEALS

To the clerk:

Enter upon the journal of the court on July 13, 2018

per order of the court _____.

Presiding Judge