

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

STATE OF OHIO,	:	APPEAL NO. C-170051
Plaintiff-Appellee,	:	TRIAL NO. B-1501888
vs.	:	<i>JUDGMENT ENTRY.</i>
VERONICA CASTRO,	:	
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 Veronica Castro appeals from the Hamilton County Common Pleas Court’s judgment overruling her “Emergency Motion to Vacate Guilty Plea under *Padilla v. Kentucky*.” We affirm the court’s judgment.

Castro was convicted in July 2015 upon her no-contest plea to identity fraud. She did not appeal her conviction.

In November and December 2016, Castro filed with the common pleas court motions captioned “Emergency Motion to Vacate Guilty Plea under *Padilla v. Kentucky*.” In each motion, she sought to withdraw her no-contest plea on the ground that the plea had been the involuntary, unknowing, and unintelligent product of her trial counsel’s ineffectiveness in advising her concerning the immigration consequences of her conviction upon her plea and the likelihood of acquittal if she rejected the plea offer.

In this appeal, Castro presents a single assignment of error challenging the overruling of her December 2016 motion. We overrule the assignment of error, because the record does not demonstrate an abuse of discretion.

Castro's motion was reviewable by the common pleas court under the standards provided by Crim.R. 32.1. *See State v. Bishop*, 2014-Ohio-173, 7 N.E.3d 605, ¶ 2, 4 (1st Dist.); *State v. Kostyuchenko*, 2014-Ohio-324, 8 N.E.3d 353, ¶ 4, 17 (1st Dist.). The rule confers upon a court the discretion to permit withdrawal of a guilty or no-contest plea after sentencing only "to correct manifest injustice." *See State v. Smith*, 49 Ohio St.2d 261, 361 N.E.2d 1324 (1977), paragraphs one and two of the syllabus; *State v. Brown*, 1st Dist. Hamilton No. C-010755, 2002-Ohio-5813.

On her motion, Castro bore the burden of demonstrating that counsel had been constitutionally deficient in advising her concerning the removal consequence of her conviction upon her plea, and that this deficiency in counsel's performance had prejudiced her, that is, that "a decision to reject the plea bargain would have been rational under the circumstances." *See Padilla v. Kentucky*, 559 U.S. 356, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010). The prejudice prong of this analysis thus required an inquiry into the circumstances surrounding Castro's decision to plead. Those circumstances necessarily included matters that transpired at the hearing where her plea was entered and accepted. *See State v. Valdez*, 1st Dist. Hamilton No. C-160437, 2017-Ohio-4260, ¶ 18.

But the record on appeal does not include a certified, bound, file-stamped copy of that transcript, conforming with the requirements of App.R. 9(B). *See State v. Bumu*, 1st Dist. Hamilton No. C-160492, 2017-Ohio-6901, ¶ 12-20. The common pleas court overruled Castro's motion upon its determination that she had failed, as required

by Crim.R. 32.1, to demonstrate a manifest injustice. That determination, in the absence of a transcript of the plea hearing, cannot be said to have been arbitrary, unconscionable, or the product of an unsound reasoning process. *See State v. Darmond*, 135 Ohio St.3d 343, 2013-Ohio-966, 986 N.E.2d 971, ¶ 34 (defining an “abuse of discretion”). Therefore, the court did not abuse its discretion in overruling the motion.

Accordingly, we affirm the judgment of the common pleas court.

A certified copy of this judgment entry constitutes 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., MYERS and MILLER, JJ.**

To the clerk:

Enter upon the journal of the court on December 22, 2017

per order of the court \_\_\_\_\_.

Presiding Judge