

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

STATE OF OHIO,	:	APPEAL NO. C-150262
	:	TRIAL NO. B-1306953
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
ORLANDO POWELL,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Following the entry of a guilty plea, the trial court found defendant-appellant Orlando Powell guilty of robbery and imposed the maximum sentence of eight years. Powell now appeals his conviction, challenging the denial of his motion to withdraw his guilty plea, the voluntary nature of his plea and his sentence.

For purposes of this appeal, we consider Powell's assignments of error out of order. In his second assignment of error, Powell contends that his guilty plea had not been entered voluntarily, intelligently and knowingly because he had not understood the consequences of his guilty plea.

Under Crim.R. 11(C), before accepting a guilty plea, the trial court must address the defendant personally and, as relevant to this appeal, make sure the defendant understands the consequences of his guilty plea and the maximum penalty

involved. *See* Crim.R. 11(C)(2)(a). Because this does not involve a constitutional right, the trial court only has to substantially comply with this requirement. *See State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621, ¶ 14. Substantial compliance means that “under the totality of the circumstances the defendant subjectively understands the implications of his plea and the rights he is waiving.” *State v. Nero*, 56 Ohio St.3d 106, 108, 564 N.E.2d 474 (1990).

A review of the record demonstrates that Powell understood the consequences of his guilty plea, including the maximum penalty. During the plea colloquy, he affirmatively acknowledged that he could be sentenced to serve between two and eight years in prison. Although Powell argues that he only entered a guilty plea because he believed he was going to receive mental-health treatment, that belief was not justified as the court gave no indication that it would impose mental-health treatment in lieu of a prison term if Powell pleaded guilty. Because the record shows that Powell understood the implications of his plea, we find that his guilty plea was entered knowingly, voluntarily and intelligently. The second assignment of error is overruled.

In his first assignment of error, Powell contends that the trial court erred by denying his motion to withdraw his guilty plea and failing to conduct an evidentiary hearing on the motion.

Under this assignment, Powell argues that he made a presentence motion to withdraw his guilty plea, and therefore, the trial court was required to conduct a hearing on the motion. But a review of the record demonstrates that Powell moved to withdraw his guilty plea immediately after the court sentenced him to prison. Thus, Powell’s motion to withdraw his guilty plea is considered a postsentence motion. *See State v. Leonhart*, 4th Dist. Washington No. 13CA38, 2014-Ohio-5601,

¶ 32. In that situation, a hearing is only required “if the facts alleged in the motion, and accepted as true by the trial court, would require that the plea be withdrawn.” *State v. Dye*, 1st Dist. Hamilton No. C-120483, 2013-Ohio-1626, ¶ 6. A guilty plea may only be withdrawn after sentence has been imposed in order to correct a “manifest injustice.” *Id.*, citing *State v. Smith*, 49 Ohio St.2d 261, 361 N.E.2d 1324 (1977), paragraph one of the syllabus; Crim.R. 32.1. Here, there was no manifest injustice to be corrected; Powell was simply unhappy that he was being sentenced to prison. Given that Powell’s plea was entered in compliance with Crim.R. 11(C), we hold that the trial court neither abused its discretion in denying Powell’s motion to withdraw his guilty plea nor erred by not holding an evidentiary hearing prior to denying the motion. The first assignment of error is overruled.

In his third assignment of error, Powell argues that his sentence is contrary to law. We may modify or vacate Powell’s sentence only if we determine by clear and convincing evidence that the record does not support the trial court’s findings under relevant statutes or that the sentence is otherwise contrary to law. *See State v. White*, 2013-Ohio-4225, 997 N.E.2d 629, ¶ 11 (1st Dist.).

As there are no findings to be made before imposing the maximum sentence, we review Powell’s sentence to determine if it is contrary to law. It is not. The maximum sentence was appropriate given Powell’s extensive criminal history both as a juvenile and an adult. The third assignment of error is overruled.

The judgment of the trial court is affirmed.

Further, 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.

**HENDON, P.J., MOCK and STAUTBERG, JJ.**

**OHIO FIRST DISTRICT COURT OF APPEALS**

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To the clerk:

Enter upon the journal of the court on August 3, 2016

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

Presiding Judge