

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

STATE OF OHIO,	:	APPEAL NOS. C-160338
		C-160476
Plaintiff-Appellee,	:	TRIAL NO. B-1305554
vs.	:	
		<i>JUDGMENT ENTRY.</i>
ANTONIO DELEON-SOLIS,	:	
Defendant-Appellant.	:	

We consider these appeals 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 Antonio Deleon-Solis was indicted for two counts of tampering with records under R.C. 2913.42(A)(1). After initially pleading not guilty, Deleon-Solis changed his plea from not guilty to guilty on one count. An interpreter was appointed to assist Deleon-Solis at his plea hearing. The trial court asked Deleon-Solis whether he was a United States citizen, to which he replied through an interpreter, "No." The trial court informed Deleon-Solis that if he were found guilty, he would be deported. The trial court asked Deleon-Solis if he still wished to plead guilty, to which Deleon-Solis replied, "Yes." The trial court found Deleon-Solis guilty of one count of tampering with records and dismissed the other count. The trial court sentenced Deleon-Solis to one-year of community control, and entered judgment on March 2, 2016.

On March 21, 2016, Deleon-Solis filed a motion to withdraw his guilty plea. On March 24, 2016, he timely filed a notice of appeal of the trial court's March 2,

2016 judgment under the appeal numbered C-160338. The trial court, on April 8, 2016, entered a judgment denying Deleon-Solis's motion to withdraw his guilty plea.

On May 24, 2016, Deleon-Solis filed a motion for a delayed appeal to appeal the trial court's judgment denying his motion to withdraw his guilty plea. We granted Deleon-Solis's motion for a delayed appeal under the appeal numbered C-160476. This court sua sponte consolidated the causes for the purpose of appeal under the case numbered C-160338.

In his appellate brief, Deleon-Solis asserts a sole assignment of error. He argues that the trial court erred in failing to grant an evidentiary hearing on his motion to withdraw his guilty plea.

When an appeal is taken from the trial court, the trial court is divested of jurisdiction, except to take action in aid of the appeal, until the case is remanded to it by the appellate court. *State ex rel. Special Prosecutors v. Judges, Court of Common Pleas*, 55 Ohio St.2d 94, 97, 378 N.E.2d 162 (1978). The trial court did not have jurisdiction to entertain Deleon-Solis's motion to withdraw his guilty plea because he had already filed a direct appeal of his judgment of conviction, and therefore, his motion was subject to dismissal. *See id.* Accordingly, upon the authority of App.R. 12(A)(1)(a), we modify the judgment appealed from to reflect a dismissal of the motion. And we affirm the judgment as modified in the case numbered C-160476.

As for the direct appeal of his judgment of conviction, Deleon-Solis has advanced no assignments of error as required by App.R. 16. Therefore, we dismiss the appeal numbered C-160338.

A certified copy of this judgment entry is 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., DEWINE and STAUTBERG, JJ.

OHIO FIRST DISTRICT COURT OF APPEALS

To the clerk:

Enter upon the journal of the court on November 23, 2016
per order of the court _____.

Presiding Judge