

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

STATE OF OHIO,	:	APPEAL NO. C-160549
Plaintiff-Appellee,	:	TRIAL NO. B-0511863
vs.	:	<i>JUDGMENT ENTRY.</i>
JEREMY JESTER,	:	
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 Jeremy Jester appeals the Hamilton County Common Pleas Court's judgment overruling three postconviction motions. We affirm the court's judgment.

Jester was convicted in 2006 upon guilty pleas to five counts of aggravated robbery and a single count of aggravated burglary and was sentenced to consecutive prison terms totaling 60 years. He unsuccessfully challenged his convictions on direct appeal, *State v. Jester*, 1st Dist. Hamilton No. C-060740 (June 20, 2007), *appeals not accepted*, 115 Ohio St.3d 1442, 2007-Ohio-5567, 875 N.E.2d 102, and in postconviction motions filed in 2013, 2015, and 2016.

Jester appeals here from the common pleas court's judgment overruling postconviction motions filed on August 28 and 31, 2015, and May 12, 2016. But in the three assignments of error advanced on appeal, he challenges only that portion of the court's judgment overruling, without an evidentiary hearing, his 2016 Crim.R. 32.1

motion to withdraw his guilty pleas. We address together, and overrule, those assignments of error.

In his 2016 motion, Jester asserted that the common pleas court had failed to comply with Crim.R. 11 in accepting his guilty pleas, and that his pleas had been the unknowing and unintelligent product of his trial counsel's ineffectiveness in assessing the strength of the state's evidence against him and in advising him to plead. The common pleas court had no jurisdiction to grant Jester's motion based on his Crim.R. 11 challenge, because that challenge could have been raised in his direct appeal, and we had, in his direct appeal, affirmed his convictions based on those pleas. *See State ex rel. Special Prosecutors v. Judges*, 55 Ohio St.2d 94, 97-98, 378 N.E.2d 162 (1978).

Our decision on appeal did not deprive the common pleas court of jurisdiction to entertain Jester's challenge in his motion to his trial counsel's effectiveness, because that challenge could not have been raised on direct appeal, when it depended for its resolution upon evidence outside the record of the proceedings leading to his convictions. *See State v. West*, 1st Dist. Hamilton No. C-150587, 2017-Ohio-5596, ¶ 20. But Jester did not support his ineffective-counsel challenge with outside evidence. He offered only a photocopy of a portion of the transcript of the proceedings at his plea hearing, and that transcript had properly been made a part of the record in his direct appeal.

The decision whether to conduct a hearing on, or to grant or deny, Jester's Crim.R. 32.1 motion to withdraw his guilty pleas was committed to the sound discretion of the common pleas court. *State v. Smith*, 49 Ohio St.2d 261, 361 N.E.2d 1324 (1977), paragraph two of the syllabus; *State v. Brown*, 1st Dist. Hamilton No. C-010755, 2002-Ohio-5813. On his motion, Jester bore the burden of demonstrating that withdrawing his plea was necessary "to correct manifest injustice." Crim.R. 32.1;

Smith at paragraph one of the syllabus. Thus, implicit in the court’s decision overruling the motion was its determination that he had failed to sustain that burden. That determination, along with the court’s decision denying a hearing on the motion, cannot be said to have been arbitrary, unconscionable, or the product of an unsound reasoning process, when the court lacked jurisdiction to entertain Jester’s Crim.R. 11 claim, and when he failed to support his ineffective-counsel claim with the outside evidence on which it depended. *See State v. Darmond*, 135 Ohio St.3d 343, 2013-Ohio-966, 986 N.E.2d 971, ¶ 34 (defining an “abuse of discretion”).

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

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.

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

To the clerk:

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

per order of the court_____.

Presiding Judge