

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

APRIL, 1997 SESSION

FILED

August 15, 1997

Cecil W. Crowson
Appellate Court Clerk

STATE OF TENNESSEE,

Appellee,

vs.

CHARLES J. MITCHELL,

Appellant.

)
)
) No. 01CO1-9605-CR-00201
)
) Wilson County
)
) Honorable J. O. Bond, Judge
)
)
) (Withdrawal of Guilty Plea)

FOR THE APPELLANT:

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OPINION FILED: _____

APPEAL DISMISSED

CURWOOD WITT
JUDGE

OPINION

The appellant, Charles J. Mitchell, pleaded guilty on September 22, 1995 in the Wilson County Criminal Court to a single count of aggravated robbery, a Class B felony.¹ The trial court accepted his plea which included a Range II sentence of twelve years in the Tennessee Department of Correction. On October 24, 1995, the appellant filed a pro se motion to withdraw his guilty plea. The trial court appointed counsel, and after a brief hearing on the motion, denied Mitchell's motion. Pursuant to Rule 3, Tennessee Rules of Appellate Procedure, Mitchell appeals that denial contending first, that he was forced to enter his plea by the state's failure to preserve exculpatory evidence, and, second, that he agreed to the plea because he thought the issue of failing to preserve exculpatory evidence would be appealed according to either Rule 10 of the Tennessee Rules of Appellate Procedure or Rule 37 of the Tennessee Rules of Criminal Procedure.

Because the trial court lacked jurisdiction to rule on the defendant's motion to withdraw his guilty plea, we are unable to reach the issues the defendant has raised and this appeal is dismissed.

The charge against Mitchell arose out of the aggravated robbery of Steve's Jewelry and Repair Store in Mt. Juliet. Jewelry, cash and a weapon were recovered from appellant's automobile. At some point, the prosecution photographed the jewelry and returned it to the owner who sold it to various purchasers.²

¹ Tenn. Code Ann. § 39-13-402 (1990).

² When defense counsel moved to inspect any tangible evidence the state provided the photographs but was unable to produce the actual jewelry. At the time of the hearing on pre-trial motions, the victim, Seat, had closed his business and moved out of state. He had no record of who had purchased the jewelry. The appellant contends that the jewelry found in his automobile was in

On September 22, 1995, one day after the trial court denied the defendant's motions to suppress, to dismiss the indictment, and to continue the trial, the defendant entered a "best interests" plea to the charge of aggravated robbery. On October, 24, 1995, the defendant filed a pro-se "Motion to Withdraw Guilty Plea," seeking to withdraw his plea to prevent manifest injustice pursuant to Rule 32(f) of the Tennessee Rules of Criminal Procedure.³ The trial judge appointed new counsel and, on December 6, 1996, the court held a hearing on the motion. Neither side presented any evidence at the hearing. The transcript reveals that the entire hearing was a colloquy between the trial court, defense counsel, and the appellant whom the court appointed to act as his own co-counsel. The trial judge denied the motion to withdraw without making any specific findings at the close of the hearing. On April 10, 1996, he signed the following order:

The Court having reviewed the entire record in this cause, including the transcript of the hearing of September 22, 1995, statements of Counsel and of the Defendant, is of the opinion that the Motion to Withdraw the Guilty Plea is without merit and should be dismissed.

It is from this order that the appellant has appealed.

his possession when he arrived at the store. According to his statements, he was attempting to sell the jewelry to Seat who ran a fencing operation as well as a jewelry store. He ran out of the store when Seat threatened him with a weapon and refused to return some of the jewelry. Appellant alleged that there were markings on the jewelry that would prove that Seat was not the rightful owner.

³ The rule states:

(f) Withdrawal of Plea of Guilty

A motion to withdraw a plea of guilty may be made upon a showing by the defendant of any fair and just reason only before sentence is imposed; but to correct manifest injustice, the court after sentence, but before the judgment becomes final, may set aside the judgment of conviction and permit the defendant to withdraw his plea.

Tenn. R. Crim. P.32(f).

The state now contends that Rule 32(f) is inapplicable in this case because the appellant filed his motion to withdraw the plea more than thirty days after he was sentenced.⁴ We conclude that the issue on appeal is not properly before this court.

The record shows that the trial court accepted the guilty plea and sentenced the appellant by judgment entered on September 22, 1995. The motion to withdraw the plea was not filed with the trial court until October 24, 1995. Rule 32(f) allows the withdrawal of a guilty plea “to correct manifest injustice” only until the judgment has become final. Tenn. R. Crim. P. 32(f). Once the judgment is final, the trial court is without jurisdiction to amend it. State v. Moore, 814 S.W.2d 381, 382 (Tenn. Crim. App. 1991). A sentencing order becomes final after thirty days. Tenn. Code Ann. §§ 40-35-401(a); Tenn. R. App. P. 3(b) and 4(a). Because October 22, 1995 was a Sunday, the judgment in this instance became final on Monday, October 23, 1995. Neither waiver nor agreement of the parties will render the trial court’s action valid after the judgment is final because the court was without jurisdiction to act. State v. Moore, 814 S.W.2d at 382. A judgment beyond the jurisdiction of a court is void. State v. Pendergrass, 937 S.W.2d 834, 837 (Tenn.1996). Because the trial court’s order denying the defendant’s motion to withdraw his guilty plea is a nullity, this appeal is dismissed.

Disposition

⁴ The state did not raise this issue before the trial court. We note that, although the appellant’s pro-se motion refers to Rule 32 (f) and the appropriate standard, neither the defense counsel, the assistant district attorney, nor the trial judge referred to Rule 32 or the manifest injustice standard at the hearing.

The trial court's order from which this appeal is taken is void. The appeal is dismissed.

CURWOOD WITT, Judge

CONCUR:

GARY R. WADE, Judge

DAVID H. WELLES, Judge