

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs April 4, 2023

FILED

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Clerk of the
Appellate Courts

STATE OF TENNESSEE v. LATRICE ROGERS

**Appeal from the Circuit Court for Lauderdale County
No. 11299 A. Blake Neill, Judge**

No. W2022-00885-CCA-R3-CD

Defendant, Latrice Rogers, appeals the trial court's order denying her motion to withdraw her guilty plea. Defendant pled guilty to multiple charges as indicted with sentencing to be determined. One week after the trial court sentenced Defendant to three years' imprisonment, Defendant filed a motion to withdraw her plea. Before the trial court ruled on the motion, Defendant filed a notice of appeal from the final judgment. The trial court later denied the motion to withdraw the plea. Defendant appeals the trial court's denial of her motion to withdraw her guilty plea. After a thorough review of the record and the parties' briefs, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

JILL BARTEE AYERS, J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR., and J. ROSS DYER, JJ., joined.

Charles M. Agee Jr., Dyersburg, Tennessee, for the appellant, Latrice Rogers.

Jonathan Skrmetti, Attorney General and Reporter; Brooke A. Huppenthal, Assistant Attorney General; Marc E. Davidson, District Attorney General; and Julie Pillow, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual and Procedural Background

On June 9, 2022, Defendant pled guilty to one count of burglary, one count of persons improperly on school premises, three counts of assault, one count of child abuse, and one count of contributing to the delinquency of a minor. Following a sentencing hearing, on June 9, 2022, the trial court ordered an effective sentence of three years' imprisonment as a Range One offender in the Tennessee Department of Correction. Judgments were entered June 9, 2022. On June 16, 2022, Defendant filed a motion to withdraw her guilty plea. On June 30, 2022, before a hearing on the motion to withdraw the guilty plea, Defendant filed a notice of appeal from the "final [j]udgment of the Lauderdale County Circuit Court entered on June 9, 2022." On September 19, 2022, following a hearing, the trial court denied Defendant's motion to withdraw her guilty plea.

Plea Hearing

The facts as presented at the plea colloquy are summarized as follows.

[T]his event occurred on November 12 of 2021 at the Ripley High School in Lauderdale County. During the regular school day around 11:28 a.m., [Defendant] arrived on the campus. She went around the administration building where you're supposed to check in and went directly to another site building. I believe identified as site 1. Again without the consent of Ripley High School Administration.

There had been some issue in the classroom. This was Toni Gaines' classroom where [Defendant's] daughter was asked not to be in a group with some other girls, and she did not want to do that. Ms. Gaines thought she had handled the situation and told her to go with another group of kids. Unbeknownst to Ms. Gaines, [Defendant's] daughter called her on a cell phone. And next thing we know, [Defendant] is storming up to where her daughter is in class. Her daughter asked the teacher to go to the restroom. Went and opened what is a locked door, let her mother in. Her mother and daughter came back to the classroom. Mother knocked on the door, and Ms. Gaines was a little bit startled because she realized she didn't have a visitor's pass. Asked, you know, what her business was. She pushed past Ms. Gaines and began assaulting another student.

This was all captured on - - initially on the video of the school video as she was coming around the building and bypassing the administration building.

And then it was captured by students in the classroom who began videoing the actual fight. That was all captured on video.

A student - - and I was trying to get down to that. [A.J.]¹ was the student. And confronted her in the classroom. Ms. Gaines was pushed out of the way. It went out into the hallway where [Defendant] and her daughter had a hold of [A.J.'s] hair and neck and were pulling her out the door trying to get her into a bathroom that was across the hallway. During that time there were constant blows that were being struck with regard to [A.J].

Another teacher became involved to try to break up the fight, Anita Naifeh. And they were able - - there was a cousin of [A.J.] who came to her aid to help to pull [the] parties apart and they were eventually pulled apart. Obviously the school administration came rushing in. Principal secured the victim and her cousin. And then SRO secured [Defendant] and her daughter.

The statement that [Defendant] made at the door when Ms. Gaines asked her what her business was, she quote, stated, "I've come to beat the girl's ass," and that her daughter was going to do the same. And told another student she would get her daughter to whoop her ass. That's when she entered the classroom and then a fight began.

There were numerous students that testified at a preliminary hearing with regard to witnessing the events that transpired. Ms. Tony Gaines. I don't know that she testified at the preliminary hearing. I honestly don't recall. I had multiple school officials that testified. As I've stated, there was a video of the actual physical fight as well as video from the school property as far as her entering without consent of school officials onto the property.

With regard to the burglary, the burglary statute allows for a charge where there is an individual that comes on property with the intent to commit an assault without the consent of the property owner, which we contend would be Ripley High School. So we believe we would have satisfied the definition of burglary with regard to this particular incident. She did not have permission to be there, came on the property without permission and committed an assault.

¹ It is the policy of this court to refer to minors by their initials in order to protect their identity.

Also, there is a specific statute with regard to persons improperly on school premises. So that was also charged, and we do believe that we will sustain the burden of proof with regard to that.

Ms. Tony Gaines received injury to her shoulder due to the push that [Defendant] did at the doorway, and she is still having some issues with regard to that. She advised that she does have a rotator [c]uff tear - - cuff tear that she believes was a result of the assault.

Anita Naifeh was the other teacher. Her foot got stomped, and she, I think, lost a toenail with regard to her involvement.

And then [A.J.] did have to be seen medically and had what I would describe as whiplash. And also some neck stiffness and also, I think, one of her fingers was sprained. She was obviously, a child under 18 years of age. And based on the [D]efendant's own statements that her daughter, T.R., was going to participate and did, in fact, participate in this assault that occurred. That is preserved by video.

Defendant stipulated to the facts underlying the offense as presented. Defendant indicated she would be requesting judicial diversion, but upon review of her record by the trial court, it was determined that she had a previous unsuccessful diversion and Defendant acknowledged before entering the plea that she was not eligible for judicial diversion. The trial court then described Defendant's charges and possible sentences for each. The trial court also explained the constitutional rights Defendant would waive by pleading guilty. Defendant acknowledged that her plea was voluntary, not the result of force or any promises, that she knew this felony conviction could result in an enhanced punishment for any future crimes, and that she would lose her right to vote and to own and possess a firearm. The trial court found Defendant competent to enter the plea, that she understood the consequences, and entered the plea freely, voluntarily and intelligently. The trial court then accepted Defendant's guilty plea and set a sentencing hearing.

Sentencing Hearing

At the sentencing hearing on June 9, 2022, several witnesses and victims testified about Defendant's actions at the school. Defendant testified and denied hurting or touching any teacher. She also denied punching or pulling A.J.'s hair. On cross-examination, Defendant stated that she was trying to protect her child and was "[] the only adult out there that was trying to break them up for about at least three or four minutes or something like that." Defendant denied being involved in the incident altogether. Instead, she reasoned she was at the school to pick up T.R. Defendant insisted she would never put her hands on

someone else's "kid." Defendant also stated that she was "possibly losing [her] freedom over nothing."

Procedural Issues

On June 16, 2022, Defendant filed a motion to withdraw her guilty plea pursuant to Tennessee Rule of Criminal Procedure 32(f)(2), claiming that her guilty plea was not knowingly and voluntarily entered into based on ineffective assistance of counsel; there was no factual basis for the plea, and therefore Defendant was denied due process; and Defendant lacked knowledge of the applicable law and did not understand her rights. On June 30, 2022, before the trial court ruled on the motion, Defendant filed a notice of appeal from the final judgment. Following a hearing on September 6, 2022, the trial court by written order denied Defendant's motion to withdraw her guilty plea, finding that Defendant had not met her burden of establishing that the plea should be withdrawn to prevent manifest injustice. The trial court noted that Defendant stipulated to the factual basis for the plea before entering the plea; the transcript of the guilty plea showed that the court advised and questioned Defendant about her rights in accordance with Rule 11 of the Tennessee Rules of Criminal Procedure; and the only evidence Defendant presented at the hearing on her motion was her own testimony which "amounted to no more than a change of heart about pleading guilty and her dissatisfaction with the punishment." Defendant did not file a new notice of appeal following the trial court's denial of her Rule 32(f)(2) motion.

Analysis

Defendant contends that because her guilty plea was not knowingly, voluntarily, and understandably entered, the trial court erred by denying her motion to withdraw her guilty plea. The State responds that Defendant's June 30, 2022 notice of appeal of the final judgment divested the trial court of jurisdiction to rule on Defendant's motion to withdraw her guilty plea, making its ruling on the motion void. The State contends that this court should dismiss Defendant's appeal for lack of jurisdiction.

At the outset, we note that the briefs and record in this appeal are underwhelming. As mentioned above, Defendant's appeal of the "final judgment" was filed after she filed her Rule 32(f)(2) motion, but prior to the trial court's ruling on the motion. Defendant then did not file a second notice of appeal indicating that she appealed the trial court's denial of her motion. Instead, Defendant proceeded with filing a brief raising the denial of the Rule 32(f)(2) motion as the sole issue.

While the State does not raise deficiencies in Defendant's brief as a reason to dismiss the appeal, such an argument could certainly have been made. Tennessee Rule of Appellate Procedure 27(a)(7) requires that the appellant set forth an argument for each

issue, along with “the reasons therefor, including the reasons why the contentions require appellate relief, with citations to the authorities and appropriate references to the record (which may be quoted verbatim) relied on[.]” Tenn. R. App. P. 27(a)(7). Similarly, Rule 10(b) of the Rules of this court states plainly that “[i]ssues which are not supported by argument, citation to authorities, or appropriate references to the record will be treated as waived in this court.” Tenn. Ct. Crim. App. R. 10(b). While Defendant’s brief does cite to legal authority to support her position, her brief contains no statement of the facts and no citations to the record to support her argument.

Additionally, while the record does contain the trial court’s order denying Defendant’s motion to withdraw her plea, the record does not contain a transcript of the hearing on the motion. It is the appellant’s duty to prepare a record necessary to convey the issues on appeal. *See* Tenn. R. App. P. 24(b). Where there is failure to provide this court with an adequate appellate record and failure to prepare a sufficient brief in compliance with the Rules of Appellate Procedure, the issue is waived. *State v. Lucy Killebrew*, 760 S.W.2d 228, 236 (Tenn. Crim. App. 1988) (waived issues where Defendant had failed to adequately brief issues by making appropriate references to the record, cite authority in support of issues, and/or make appropriate arguments); *see also State v. Jason Steven Molthan*, No. M2021-01108-CCA-R3-CD, 2022 WL 17245128, at *2 (Tenn. Crim. App. Nov 28, 2022) *no. perm app. filed* (waived issues where Defendant had failed to provide an adequate appellate record and had not prepared a sufficient brief). Again, these issues were not raised by the State. The State instead argues that Defendant’s June 30, 2022 notice of appeal of the final judgment divested the trial court of jurisdiction to rule on Defendant’s motion to withdraw her guilty plea, making its ruling on the motion void.

Despite the above-noted deficiencies, in the interests of judicial economy, we will consider the appeal in this case. This court’s jurisdiction generally attaches upon a party’s filing a notice of appeal. *State v. Peak*, 823 S.W.2d 228, 229 (Tenn. Crim. App. 1991) (citing Tenn. R. App. P. 3(e), 4(a)); *State v. Givhan*, 616 S.W.2d 612, 613 (Tenn. Crim. App. 1980)). As a general rule, a trial court’s judgment becomes final thirty days after its entry unless a timely notice of appeal or other post-trial motion is filed. *State v. Moore*, 814 S.W.2d 381, 382 (Tenn. Crim. App. 1991). Upon the filing of a notice of appeal, the trial court generally loses its jurisdiction and has no power to amend its judgment unless made pursuant to Tenn. R. Crim. P. 36 to correct a clerical error from oversight or omission. *State v. Pendergrass*, 937 S.W.2d 834, 837 (Tenn. 1996); *Moore*, 814 S.W.2d at 381. However, the State fails to recognize Rule 4(e) of the Tennessee Rules of Appellate Procedure which states:

The trial court retains jurisdiction over the case pending the court’s ruling on any timely filed motion specified in subdivision (b) or (c) of this rule. If a motion specified in either subdivision (b) or (c) is filed within the time

permitted by the applicable rule referred to in that subdivision, the filing of a notice of appeal prior to the filing of the motion, or the filing of a notice of appeal prior to the trial court's ruling on an earlier filed motion, does not deprive the trial court of jurisdiction to rule upon the motion. A notice of appeal filed prior to the trial court's ruling on an earlier filed motion, does not deprive the trial court of jurisdiction to rule upon the motion. A notice of appeal filed prior to the trial court's ruling on a timely specified motion shall be deemed to be premature and shall be treated as filed after the entry of the order disposing of the motion and on the day thereof.

Subdivision (c) of Rule 4 includes a Rule 32(f) motion for withdrawal of a guilty plea. Thus, the trial court retained jurisdiction over the timely filed Rule 32(f) motion, and Defendant's notice of appeal was prematurely filed.

While better practice would have been for Defendant to file a second notice of appeal alerting this court and the State that it was appealing the trial court's denial of the Rule 32(f) motion, Defendant's brief solely raises that issue, and clearly the State understood that to be Defendant's issue on appeal. Defendant argues that the trial court failed to follow Rule 32(f) of the Tennessee Rules of Criminal Procedure and should have granted her motion in order to correct manifest injustice. The State does argue that if the trial court had jurisdiction, it acted within its discretion by denying Defendant's request to withdraw her guilty plea post-sentencing.

Again, although not raised by the State, we note another deficiency, this time with the record. We do not have a transcript from the trial court's hearing on Defendant's motion to withdraw her guilty plea. Thus, we must first ascertain whether we have a sufficient record to review. "[T]he Court of Criminal Appeals should determine on a case-by-case basis whether the record is sufficient for a meaningful review under the standard adopted in [*State v. Bise*, 380 S.W.3d 682 (Tenn. 2012)]." See *State v. Caudle*, 388 S.W.3d 273, 279 (Tenn. 2012). "If . . . the record is adequate for a meaningful review, the appellate court may review the merits of the sentencing decision with a presumption that the missing transcript would support the ruling of the trial court." See also *State v. Dalvin Smith*, No. W2017-01915-CCA-R3-CD, 2018 WL 4579693, at *3 (Tenn. Crim. App. Sept. 21, 2018) (Witt, J., concurring) (evidence introduced at sentencing provided an adequate record to review the length, range, and manner of defendant's sentence in the absence of the trial transcript). As stated above, it is the appellant's duty to prepare a record only as necessary to convey the issues on appeal. Applying these principles to this case, after reviewing the record, which includes transcripts from the guilty plea hearing and the sentencing hearing, exhibits, and the trial court's order denying Defendant's motion to withdraw her plea, we conclude that the record is adequate to conduct a meaningful appellate review.

The trial court's disposition of a defendant's motion to withdraw a guilty plea is reviewed under an abuse of discretion standard. *State v. Phelps*, 329 S.W.3d 436, 443 (Tenn. 2010) (citing *State v. Crowe*, 168 S.W.3d 731, 740 (Tenn. 2005)). Rule 32(f)(2) of the Tennessee Rules of Criminal Procedure provides: "After sentence is imposed but before the judgment becomes final, the court may set aside the judgment of conviction and permit the defendant to withdraw the plea to correct manifest injustice." A defendant has the burden of establishing that the plea should be withdrawn to prevent manifest injustice. *State v. Turner*, 919 S.W.2d 346, 362 (Tenn. Crim. App. 1995). "In determining whether the accused has carried this burden, the trial court must determine whether the accused and any witnesses presented to establish this standard are credible." *Id.* at 355. To establish manifest injustice, a defendant must show more than a change of heart or dissatisfaction with the punishment ultimately imposed. *Id.*

In denying Defendant's motion to withdraw her plea, the trial court relied on Defendant's stipulation to the factual basis for the plea before entering the plea. The record clearly indicates that Defendant did agree to the facts as announced at the plea hearing. Additionally, the trial court considered the testimony of the witnesses at the sentencing hearing. While Defendant presented videos of a portion of the incident, the trial court found that the videos were in fact, only portions of the incident, and did not include all of the fight. The trial court next found after reviewing the plea colloquy that Defendant was advised of her legal rights in accordance with Rule 11 of the Tennessee Rules of Criminal Procedure, and that she did have knowledge of those rights before entering the plea. Finally, the trial court noted that the only evidence presented at Defendant's hearing on her motion to withdraw her plea was her own testimony which

amounted to no more than a change of heart about pleading guilty and her dissatisfaction with the punishment. Defendant did not put forward any evidence to show '[(j)a coercion, fraud, duress or mistake, (b) fear, (c) a gross misrepresentation made by the district attorney general, or an assistant, (d) the district attorney general or an assistant, [withheld] material, exculpatory evidence, which influence[d] the entry of the plea, or [(e)] the plea of guilty was not voluntary, understandingly, or knowingly entered.' [*Turner*, 919 S.W.2d at 355].

The trial court's ruling is substantiated by the record, and we find that it did not abuse its discretion in denying Defendant's motion to withdraw her guilty plea after sentencing.

CONCLUSION

For the forgoing reasons, the judgment of the trial court is affirmed.

JILL BARTEE AYERS, JUDGE