

[Cite as *State v. Vance*, 2010-Ohio-5757.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY**

STATE OF OHIO	:	
	:	Appellate Case Nos. 09-CA-115
Plaintiff-Appellee	:	09-CA-116
	:	
v.	:	
	:	Trial Court Case Nos. 09-CR-384
LONNIE J. VANCE	:	09-CR-552
	:	
Defendant-Appellant	:	(Criminal Appeal from Common Pleas Court)
	:	

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OPINION

Rendered on the 24th day of November 2010.

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FAIN, J.

{¶ 1} In this consolidated appeal, Defendant-appellant Lonnie Vance appeals from separate judgments of conviction and sentence on charges of Attempted Burglary and Violation of a Protection Order. The latter charge was elevated to a fifth-degree felony, due to Vance's two prior convictions for Violation of a Protection

Order. After pleading guilty to the charges, Vance was sentenced to a one-year term of imprisonment for Violation of the Protection Order, and eighteen months in prison for Attempted Burglary. The sentences were imposed consecutive to each other, resulting in a total sentence of two-and-a-half years in prison.

{¶ 2} Vance contends that the trial court erred in overruling his motion to dismiss the specifications of his prior criminal convictions, which he claims were procured in violation of his right to counsel.

{¶ 3} We conclude that by pleading guilty, Vance waived any error regarding the trial court's denial of his motion to dismiss. A guilty plea is an admission of the facts as alleged in the indictment and is an admission of the essential elements of the offense. Vance's prior convictions for Violation of a Protection Order transform the crime by increasing it from a first-degree misdemeanor to a fifth-degree felony, pursuant to R.C. 2919.27(B)(3). Where prior convictions transform a crime itself by increasing its degree, a prior conviction is an essential element of the crime. By pleading guilty, Vance admitted all the essential elements of the crime as charged, including his prior convictions for Violation of a Protection Order. A guilty plea renders irrelevant constitutional violations that are not logically inconsistent with the valid establishment of factual guilt, and which do not stand in the way of conviction if factual guilt is validly established. Vance has not raised any issue regarding whether the guilty plea in the case before us was voluntarily, intelligently, or knowingly made. Vance, therefore, has waived the right to appeal the trial court's denial of his motion to dismiss.

{¶ 4} Accordingly, the judgment of the trial court is Affirmed.

I

{¶ 5} In May 2009, Lonnie Vance was indicted by the Clark County Grand Jury on a charge of Violation of a Protection Order. The indictment alleges that Vance had previously been convicted of Violating a Protection Order in two Clark County Municipal Court cases (Case Nos. 07CRB6510 and 09CRA1589). The case number assigned to the April 2009 violation is Clark County Common Pleas Court Case No. 09-CR-0384, and the charge involved an incident that had allegedly occurred in April 2009.

{¶ 6} In July 2009, the trial court consolidated Case No. 09-CR-0384 with another case involving Vance that involved a second Violation of a Protection Order. The incident allegedly occurred in May 2009, and the case number assigned is Clark County Common Pleas Court Case No. 09-CR-0398. This case also had specifications arising from Vance's two prior convictions in the Clark County Municipal Court.

{¶ 7} Vance was charged in a third case with further offenses that allegedly occurred in June 2009. The case number assigned is Clark County Common Pleas Court Case No. 09-CR-0552. Count One of the indictment in Case No. 09-CR-0552 alleges that Vance had committed Attempted Burglary. Count Two alleges that Vance was in Violation of a Protection Order. Like the other cases, the indictment alleges that Vance had previously been convicted of Violation of a Protection Order in the two Clark County Municipal Court cases.

{¶ 8} Vance subsequently filed a motion to dismiss the specifications of prior

criminal convictions, based on the fact that he had not been represented by counsel during the municipal court proceedings. The trial court then held a hearing on the motion. At the hearing, Vance testified that he had desired counsel in the two municipal court cases, but did not qualify financially for appointed counsel. Vance acknowledged that he was allowed to hire an attorney. He stated that he failed to do so, because he could not afford an attorney. Vance also acknowledged that the judges had explained all of his constitutional rights during the two municipal court cases, and that he chose to plead guilty without the assistance of counsel.

{¶ 9} The trial court concluded that Vance failed to meet his burden under R.C. 2945.75(B)(3) of proving a constitutional defect in his prior convictions by a preponderance of the evidence. Vance then pled guilty to the Violation of the Protection Order in Case No. 09-CR-0384, and to the Attempted Burglary charge, which was Count One in Case No. 09-CR-0552. In exchange for these guilty pleas, the State dismissed the charge in Case No. 09-CR-0398, and Count Two of the indictment in Case No.09-CR-0552. The State also agreed to stand silent during sentencing. The trial court accepted Vance's guilty pleas, and found him guilty of Violation of a Protection Order and Attempted Burglary. Vance was sentenced accordingly.

{¶ 10} Vance appeals from the judgments of conviction and sentence in Case No. 09-CR-0384 and Case No. 09-CR-0552. We consolidated the appeals in June 2010.

{¶ 11} Vance's sole assignment of error in the consolidated cases is as follows:

{¶ 12} "THE TRIAL COURT ERRED IN OVERRULING MR. VANCE'S MOTION SEEKING DISMISSAL OF THE SPECIFICATIONS OF PRIOR CRIMINAL CONVICTIONS."

{¶ 13} Under this assignment of error, Vance contends that the trial court erred in overruling his motion to dismiss the specifications of his prior convictions, because the State failed to show that he had validly waived his right to counsel in the two municipal court cases. The State contends that by pleading guilty to the charges, Vance waived his right to claim error regarding the trial court's denial of his motion to dismiss.

{¶ 14} In *State v. Fitzpatrick*, 102 Ohio St.3d 321, 2004-Ohio-3167, the Supreme Court of Ohio held that:

{¶ 15} " '[A] guilty plea * * * renders irrelevant those constitutional violations not logically inconsistent with the valid establishment of factual guilt and which do not stand in the way of conviction if factual guilt is validly established.' * * * Therefore, a defendant who * * * voluntarily, knowingly, and intelligently enters a guilty plea with the assistance of counsel 'may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.' *Tollett v. Henderson* (1973), 411 U.S. 258, 267, 93 S.Ct. 1602, 36 L.Ed.2d 235. See, also, *Ross v. Auglaize Cty. Common Pleas Court* (1972), 30 Ohio St.2d 323, 59 O.O.2d 385, 285 N.E.2d 25 (valid guilty plea by counseled defendant waives all nonjurisdictional defects in prior stages of proceedings); *State v. Spates* (1992), 64

Ohio St.3d 269, 271-273, 595 N.E.2d 351.” *Fitzpatrick*, 2004-Ohio-3167, ¶ 78 (internal citation omitted).

{¶ 16} The Supreme Court concluded in *Fitzpatrick* that the defendant’s guilty plea precluded him from raising issues on appeal that did not attack the trial court’s jurisdiction to hear the case, the constitutionality of the statutes under which he was convicted, or the voluntary, knowing, and intelligent character of his guilty plea. *Id.* at ¶ 79.

{¶ 17} In the case before us, Vance attacks the validity of his prior convictions for Violation of a Protection Order, which increase the degree of the charged crime from a first-degree misdemeanor to a fifth-degree felony. R.C. 2919.27(B)(2) and (3). The Supreme Court of Ohio has held that: “When existence of a prior conviction does not simply enhance the penalty but transforms the crime itself by increasing its degree, the prior conviction is an essential element of the crime and must be proved by the state.” *State v. Brooke*, 113 Ohio St.3d 199, 2007-Ohio-1533, ¶ 8 (citation omitted).

{¶ 18} A guilty plea is an admission of the facts as alleged in an indictment, and is an admission of the essential elements of the offense. See, e.g., *State v. Greathouse*, 158 Ohio App.3d 135, 2004-Ohio-3402, ¶ 7; *State v. Moore* (May 13, 1993), Montgomery App. No. 13564; and Crim. R. 11(B). By pleading guilty, Vance admitted all the essential elements of the crimes as charged, including his prior convictions for Violation of a Protection Order. Vance was represented by counsel when he pled guilty to Violation of the Protection Order in Case No. 09-CR-0384, and to the Attempted Burglary charge in Case No. 09-CR-0552. Vance has not raised

any issue regarding whether his guilty pleas were knowing, voluntary, or intelligent. Accordingly, Vance is precluded from raising issues on appeal pertaining to the trial court's denial of his motion to dismiss.

{¶ 19} Vance's sole assignment of error is overruled.

III

{¶ 20} Vance's sole assignment of error having been overruled, the judgment of the trial court is Affirmed.

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DONOVAN, P.J., and BROGAN, J., concur.

Copies mailed to:

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