

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-VS-

ROBERT WAYNE WAUGAMAN III

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.
Hon. Patricia A. Delaney, J.
Hon. Craig R. Baldwin, J.

Case No. 18CA19

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Richland County Court
of Common Pleas, Case No. 2017 CR
0634

JUDGMENT:

AFFIRMED

DATE OF JUDGMENT ENTRY:

March 18, 2019

APPEARANCES:

For Plaintiff-Appellee:

GARY D. BISHOP
RICHLAND CO. PROSECUTOR
JOSEPH C. SNYDER
38 South Park Street
Mansfield, OH 44902

For Defendant-Appellant:

WILLIAM T. CRAMER
470 Olde Worthington Road, Suite 200
Westerville, OH 43082

Delaney, J.

{¶1} Appellant Robert Wayne Waugaman III appeals from the February 9, 2018 Sentencing Entry of the Richland County Court of Common Pleas. Appellee is the state of Ohio.

FACTS AND PROCEDURAL HISTORY

{¶2} This case arose while appellant was on bond in Richland County Court of Common Pleas case number 2017 CR 634. Appellant's convictions in that case are the subject of a contemporaneous but separate appeal in 5th Dist. Richland No. 18 CA 18.

{¶3} In the instant case, on August 8, 2017, around 2:08 a.m., appellant called police and alleged he had been assaulted by his roommate, Tiffany. Upon arrival, police discovered appellant lived together with Tiffany and his girlfriend Mary Doe, despite the existence of a protection order against appellant on behalf of Mary Doe. Mary Doe and Tiffany told police appellant's injuries were self-inflicted. Police discovered the protection order and learned appellant had a prior conviction for violation of a protection order.

{¶4} Appellant was arrested and transported to the Richland County Jail.

{¶5} Appellant was charged by indictment with one count of violation of a protection order pursuant to R.C. 2919.27(A)(1), a felony of the fifth degree. The indictment notes appellant has previously been convicted of violation of a protection order.

{¶6} On February 9, 2018, appellant entered a plea of guilty to the offense and was sentenced to a prison term of 12 months to be served concurrently with his sentence in Richland County Court of Common Pleas case no. 2017 CR 0111.¹

{¶7} Appellant now appeals from the trial court's sentencing entry of February 9, 2018.

{¶8} Appellant raises one assignment of error:

ASSIGNMENT OF ERROR

{¶9} "THE PLEA WAS NOT ENTERED KNOWINGLY, VOLUNTARILY, OR INTELLIGENTLY BECAUSE THE TRIAL COURT PROMISED TO IMPOSE CONCURRENT PRISON TERMS WITH A SENTENCE IN ANOTHER CASE THAT WILL BE REVERSED ON APPEAL."

ANALYSIS

{¶10} In his sole assignment of error, appellant contends his guilty plea in the instant case was not entered knowingly, intelligently, or voluntarily. We disagree.

{¶11} Appellant does not point to any error in the acceptance of plea of no contest but we have reviewed the record thereof. Generally, a defendant knowingly and voluntarily enters a guilty plea if the trial court advised the defendant of the nature of the charge and the maximum penalty involved, the effect of entering a plea to the charge, and that the defendant will be waiving certain constitutional rights by entering his plea. *State v. Kelley*, 57 Ohio St.3d 127, 129, 566 N.E.2d 658 (1991).

¹ Appellant has appealed from the judgment entry of conviction and sentence in that case, which is before this Court as *State v. Waugaman*, 5th Dist. Richland No. 2018 CA 0018. That appeal was filed contemporaneously with the instant appeal but the two are not consolidated.

{¶12} In this case, as part of a plea agreement, appellant pleaded guilty to one count of violation of a protection order, a violation of R.C. 2919.27(A)(1), a felony of the fifth degree, and the trial court imposed a concurrent term of 12 months. Appellant's argument is premised upon the outcome of the above-cited contemporaneous appeal, *State v. Waugaman*, 5th Dist. Richland No. 2018 CA 0018, and is dependent upon the reversal of his kidnapping conviction and sentence in that case. We have affirmed appellant's conviction and sentence, therefore his argument about the concurrent sentence imposed in the instant case is moot.

{¶13} Crim.R. 11(C)(2) details the trial court's duty in a felony plea hearing to address the defendant personally and to convey certain information to such defendant; the Rule prohibits acceptance of a plea of guilty or no contest without performing these duties. *State v. Holmes*, 5th Dist. Fairfield No. 09 CA 70, 2010–Ohio–428, ¶ 10. The Rule requires guilty pleas to be made knowingly, intelligently and voluntarily. Although literal compliance with Crim. R. 11 is preferred, the trial court need only “substantially comply” with the rule when dealing with the non-constitutional elements of Crim.R. 11(C). *State v. Dunham*, 5th Dist. No.2011–CA–121, 2012–Ohio–2957, ¶ 11, citing *State v. Ballard*, 66 Ohio St.2d 473, 475, 423 N.E.2d 115 (1981), and *State v. Stewart*, 51 Ohio St.2d 86, 364 N.E.2d 1163 (1977).

{¶14} The record demonstrates the trial court had a meaningful dialogue with appellant, fully apprising him of the rights he was waiving. *State v. Curry*, 5th Dist. Muskingum No. CT2015-0005, 2016-Ohio-401, ¶ 19, citing *State v. Tillman*, 6th Dist. Huron No. H–02–004, 2004–Ohio–1967, ¶ 20. The court engaged appellant in a personal inquiry as to whether he understood the plea agreement and its consequences. Appellant

was represented throughout the hearing. Nothing in the record indicates that appellant was under the influence of any drug or other substance which would prohibit his understanding of the court's questions. The record indicates that he understood the terms of the agreement and entered an intelligent, knowing and voluntary plea.

{¶15} A review of the plea hearing reveals the trial court advised appellant of his constitutional rights, the potential penalties for each offense, and the possibility of post release control. Further, the trial court inquired as to the voluntariness of appellant's plea of guilty. In short, the trial court complied with Crim.R. 11, therefore, appellant's sole assignment of error is found to be without merit. *See, State v. Broyles*, 5th Dist. Ashland No. 14–COA–037, 2015–Ohio–4778, ¶¶ 10–13; *State v. Reed*, 5th Dist. Ashland No. 14–COA–010, 2015–Ohio–3534, ¶ 12.

{¶16} The sole assignment of error is overruled.

CONCLUSION

{¶17} Appellant's sole assignment of error is overruled and the judgment of the Richland County Court of Common Pleas is affirmed.

By: Delaney, J.,

Hoffman, P.J. and

Baldwin, J., concur.