[Cite as *State v. West,* 2018-Ohio-5386.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
BELMONT COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

LORI RENE WEST,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case Nos. 16 BE 0048, 16 BE 0049

Criminal Appeal from the
Belmont County Northern Division Court of Belmont County, Ohio
Case Nos. 15 TRD 0203, 16 TRD 1008-01

BEFORE:
Gene Donofrio, Cheryl L. Waite, Kathleen Bartlett, Judges.

JUDGMENT:
Case No. 16 BE 0048 Dismissed
Case No 16 BE 0049 Affirmed

Atty. Scott Lloyd, Assistant Prosecutor, 147-A West Main Street, St. Clairsville, Ohio 43950, for Plaintiff-Appellee, and

Atty. John Falgiani Jr., P.O. Box 8533, Warren, Ohio 44484, for Defendant-Appellant.

Dated:
December 31, 2018

Donofrio, J.

{¶1} Defendant-appellant, Lori Rene West, appeals her convictions following guilty pleas in the Belmont County Northern Division Court for two counts of driving under suspension in violation of R.C. 4510.11(A), misdemeanors of the first degree.

{¶2} On April 22, 2015, appellant entered a guilty plea in case 15 TRD 203 in the Belmont County Northern Division Court for one count of driving under suspension. The trial court sentenced appellant to 120 days in jail. It suspended 110 of those days and ordered appellant to serve the remaining ten days doing community service. But appellant did not complete any of her required community service. The trial court then ordered appellant to serve 20 days of incarceration for failure to complete community service and contempt of court. With seven days remaining on her sentence, the trial court suspended appellant's incarceration due to a family medical issue. The trial court released appellant and ordered her to return to court two weeks later to determine when she would serve the remainder of her sentence. After multiple continuances at appellant's request, she finally returned to court for a hearing on September 14, 2016.

{¶3} During this time, appellant was charged with two more counts of driving under suspension in cases 16 TRD 79 and 16 TRD 1008. On September 14, 2016, plaintiff-appellee, the State of Ohio, dismissed case 16 TRD 79 and appellant pled guilty to case 16 TRD 1008. Appellant's hearing in case 15 TRD 203 was consolidated by the trial court with her sentencing hearing in case 16 TRD 1008, which also took place that day.

{¶4} The trial court ordered appellant to serve 180 days of incarceration with credit for 33 days of time served. The court also imposed the remaining seven days of incarceration in case 15 TRD 203 to be served consecutively to the sentence in case 16 TRD 1008 for a total of 154 days of incarceration. Appellant filed two notices of appeal on September 28, 2016, one in case 15 TR 203 (appeal number 16 BE 0048) and the other on case 16 TR 1008 (appeal number 16 BE 0049). This court consolidated the two cases. Appellant now raises one assignment of error.

{¶5} Appellant's sole assignment of error states:

THE TRIAL COURT ERRED AS A MATTER OF LAW IN ACCEPTING APPELLANT'S GUILTY PLEAS WITHOUT ENSURING THAT THEY WERE MADE KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY.

{¶6} Appellant argues that her pleas in both cases were not knowing, intelligent, or voluntary because the trial court did not inform her of the constitutional rights she would be waiving by pleading guilty during either plea hearing.

{¶7} Before turning to the merits of appellant's argument, we must address an issue with her appeal from the judgment in 15 TR 203.

{¶8} Appellant entered her guilty plea on April 22, 2015. The trial court sentenced appellant on May 27, 2015. Appellant never filed a notice of appeal from the court's May 2015 judgment entry. The May 2015 judgment entry was a final, appealable order from which appellant should have filed a notice of appeal if she wished to contest the voluntariness of her plea or her sentence in that case.

{¶9} Appellant did not file her notice of appeal until September 28, 2016, when the trial court simply ordered her to finish serving the remaining seven days left on her sentence that it imposed in May 2015. This appeal is untimely. Appellant had 30 days from May 27, 2015 to file a timely notice of appeal in case 15 TR 203. App.R. 4(A)(1). Because appellant's appeal in 15 TR 203 is untimely, appeal 16 BE 0048 is hereby dismissed.

{¶10} The September 14, 2016 hearing in this case was to impose the remaining seven days of appellant's sentence in 15 TR 203. Therefore, it is not a final, appealable order in regard to 15 TR 203.

{¶11} We turn now to address appellant's arguments as they apply to her appeal of the trial court's judgment in 16 TR 1008 (16 BE 0049).

{¶12} When determining the validity of a plea, this Court must consider all of the relevant circumstances surrounding it. *State v. Trubee*, 3d Dist. No. 9-0365, 2005-Ohio-552, ¶ 8, citing *Brady v. United States*, 397 U.S. 742, 90 S.Ct 1463 (1970). In misdemeanor cases involving petty offenses the court shall not accept a guilty plea without first informing the defendant of the effect of the plea of guilty, no contest, and not guilty. Crim.R. 11(E). A "petty offense" is a misdemeanor other than a serious

offense. Crim.R. 2(D). A "serious offense" is one that can result in more than six months of incarceration. Crim.R. 2(C). If the plea is not knowing, intelligent, and voluntary, it has been obtained in violation of due process and is void. *State v. Martinez*, 7th Dist. No. 03MA196, 2004-Ohio-6806, ¶ 11, citing *Boykin v. Alabama*, 395 U.S. 238, 243, 89 S.Ct. 1709 (1969).

{¶13} Appellant pled guilty to driving under suspension in violation of R.C. 4510.11(A). Driving under suspension is a misdemeanor of the first degree. R.C. 4510.11(D)(1). Pursuant to R.C. 2929.24(A)(1), misdemeanors of the first degree are punishable by up to 180 days of incarceration, or six months. Pursuant to Crim.R. 2(D), appellant's charges are petty offenses and Crim.R. 11(E) applies.

{¶14} The following plea colloquy in case 16 TRD 1008 took place on September 14, 2016, as follows:

> THE COURT: Now, Ms. West, you heard your attorney. You are entering a guilty plea to one count of Driving Under Suspension, a misdemeanor of the first degree. Therefore, if you are convicted with that guilty plea, you may face up to six months in jail. Is it your desire that your attorney enter that guilty plea on your behalf?
>
> THE DEFENDANT: Yes.
>
> THE COURT: Do you understand that with that plea, you are making a completion [sic.] admission of your guilt, and you're giving up all of your Constitutional rights.
>
> * * *
>
> THE DEFENDANT: Yes. Yes, I'm sorry.
>
> THE COURT: The guilty plea is accepted. * * *

(9/14/16 Tr. 4-5).

{¶15} Appellant argues that because the trial court only advised her that she would be giving up her "constitutional rights" and did not specifically advise her of the rights she would be waiving, her guilty plea was not knowing, voluntary, or intelligent. In

support of this argument, appellant cites this Court's decision in *State v. Malek*, 7th Dist. No. 02 CA 97, 2002-Ohio-6431.

{¶16} In *Malek*, Malek was originally charged with felonious assault that was amended to misdemeanor assault. *Id*. at ¶ 1-2. Malek entered a plea of no contest to the misdemeanor assault charge. *Id*. at ¶ 2. The plea colloquy the trial court engaged in was: "The motion to amend is granted. The Defendant enters a plea of No Contest. There is a finding of guilt." *Id*. at ¶ 14. This Court reversed Malek's conviction, in part, because the trial court did not inform Malek of the effect of his no contest plea. *Id.* at ¶ 15.

{¶17} *Malek* is distinguishable from the case at bar. Here, at the plea hearing, the trial court informed appellant of the effect of the guilty plea. Specifically, the trial court informed appellant that, by pleading guilty, she was making a complete admission of guilt and giving up her constitutional rights.

{¶18} Moreover, the Ohio Supreme Court addressed the issue appellant raises in *State v. Watkins*, 99 Ohio St.3d 12, 2003-Ohio-2419, 788 N.E.2d 635. In *Watkins*, the Ohio Supreme Court held that the rights explained in felony cases pursuant to Crim.R. 11(C) do not have to be explained in misdemeanor cases as described in Crim.R. 11(D) or Crim.R. 11(E). *Watkins*, at ¶ 27-28.

{¶19} The trial court must substantially comply with Crim.R. 11(E). *State v. Bailes*, 7th Dist. No. 01-CA-224, 2002-Ohio-5217, ¶ 10-11. At appellant's plea hearing, the trial court informed her that the plea of guilty is a complete admission of guilt and that she would be waiving all constitutional rights. (9/14/16 Tr. 4-5). After reviewing the transcript, the trial court substantially complied with Crim.R. 11(E) and appellant's guilty plea was voluntary, intelligent, and knowing.

{¶20} Accordingly, appellant's sole assignment of error lacks merit and is overruled.

{¶21} For the reasons stated above, the trial court's judgment in case 16 TR 1008 is hereby affirmed.

Waite, J., concurs.

Bartlett, J., concurs.

For the reasons stated in the Opinion rendered herein, the sole assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Belmont County Northern Division Court of Belmont County in case number 16 TR 1008, Ohio, is affirmed. Appeal number 16 BE 0048 is hereby dismissed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.