

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 10AP-53
	:	(C.P.C. No. 09CR-5209)
Eric Koester,	:	
	:	(ACCELERATED CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on October 14, 2010

Ron O'Brien, Prosecuting Attorney, and *Steven L. Taylor*, for appellee.

Howard Legal LLC, and *Felice Howard*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

TYACK, P.J.

{¶1} Eric Koester is appealing from the judgment and sentence of the trial court.

His counsel has assigned a single error:

The trial court erred when it failed to inform the defendant that the parole board can return him to prison for up to one-half of his stated prison term as a consequence of violating a term of post-release control.

{¶2} Koester, with leave of court, has alleged several additional errors:

1. Entry Of Guilty Plea: 11/23/09. The EOGP (pg 2 of 2 In Mrs. Howard's brief) states that my F3 Robbery carries an optional 3 years of PRC where in fact it should say in my case that it is mandatory. SEE: ORC-2967.28 (B) (3) State v. Sarkozy, State v. Black 2911.02A3
2. The trial court didn't tell me that I would have to serve up to half of all my PRC time if I violate said PRC. In fact I still don't quite understand what was supposed to transpire.
3. Judge McIntosh at no time told me that I had a right to be found guilty by a unanimous decision, by a jury of my peers if I decided to take this case to trial. Criminal Rule 11(C)(2)(c)-State v. Veney 853338 specifically states that I should have been entirely informed of my rights as it pertains to a jury trial.
4. Judge McIntosh refused to let me fire my public defender after several attempts to do so. Shopis refuses to file motions for a bond hearing or subpoena any of my witnesses. I also am referring to this portion of my brief as Ineffective Assistance of Counsel.
5. Judge McIntosh was aware that I was on psychiatric medications and despite the several references to my mental health issues he still felt it totally unnecessary to get me a psych evaluation prior to any sentencing.
6. Judge McIntosh ordered a CBCF referral with no intention of giving it to me. It was being used as a means to manipulate me to cop out with the false hope of receiving programming instead of going to prison.
7. Judge McIntosh refused me any type of bond hearing so I could get out and hire my own attorney.
8. Judge McIntosh purposely misdirected me from firing Shopis. I was in the process of talking when Judge McIntosh cut me off to implement his won line of questioning.
9. Judge McIntosh sent me a motion denying me transcripts of proceedings/evidence.

{¶3} Addressing counsel's assigned error first, the trial court judge engaged in an extended dialogue with Eric Koester over two days. Koester acknowledged having drug and alcohol problems. Koester has repeatedly been sent to prison, usually for committing robberies. He was out of prison briefly before he committed another serious offense.

{¶4} The record before us demonstrates that Koester was notified that he was subject to a period of post-release control ("PRC") if he were sent to prison again as a result of being found guilty of a new robbery charge. At the time he entered his guilty plea, he was incarcerated at Noble Correctional Institution as a result of violating the terms of a prior period of PRC. He signed a guilty plea form after reviewing it with his counsel. The form noted that the robbery to which he was pleading guilty was a felony of the third degree without physical harm being caused or threatened and, as a result, Koester was subject to a new period of three years of PRC which was optional. The trial judge also signed the form.

{¶5} The trial judge asked Koester if Koester believed he understood the form. Koester acknowledged that he did.

{¶6} The trial court judge also stated:

THE COURT: Likewise with this case, at any point in time in the process if I were to send you to prison, once released from prison, you'd be subject to post-release control on this case. That means that the Adult Parole Authority would have supervision over you and would place certain restrictions on what you can and cannot do. If you violate those restrictions, they can actually return you to the institution for -- even though you've done all the time on my case they could return you to prison for violating your post-release control. Do you understand that, sir?

Koester responded:

THE DEFENDANT: Explicitly. Yes, I do. Very much so.

(Tr. 23.)

{¶7} Koester's counsel was asked if he believed Koester was entering a guilty plea with a full understanding of the potential consequence of his plea. Counsel affirmed Koester's full understanding.

{¶8} Returning to the subject of PRC, the trial court stated:

THE COURT: All right. Mr. Koester, if placed on post-release control, you could be on post-release control for up to three years. It's not mandatory.

(Tr. 28.)

{¶9} When Koester returned for sentencing, the judge told him:

Once released from prison in this case, sir, you will be subject to post-release control. The Adult Parole Authority will have supervision over you and will place certain restrictions on what you can and cannot do. If you violate those restrictions, as you're aware, sir, they can send you back to the institution. Even though you've done all the time on my case they could return you to the institution for violating your post-release control. In your case, your period of supervision could be for as much as three years.

(Tr. 51-52.)

{¶10} Under the circumstances, PRC was fully reviewed before Koester entered his plea, while entering his plea and after while being sentenced. Also, immediately after he was sentenced, he was given a copy of a notice, which read:

**NOTICE
(Prison Imposed)**

After you are released from prison, you (may) have a period of post-release control for 3 years following your release

from prison. If you violate post-release control sanctions imposed upon you, any one or more of the following may result:

(1) The Parole Board may impose a more restrictive post-release control sanction upon you: and

(2) The Parole board may increase the duration of the post-release control subject to a specified maximum; and

(3) The more restrictive sanction that the Parole Board may impose may consist of a prison term, provided that the prison term cannot exceed nine months and the maximum cumulative prison term so imposed for all violations during the period of post-release control cannot exceed one-half of the stated prison term originally imposed upon you; and

(4) If the violation of the sanction is a felony, you may be prosecuted for the felony and, in addition to any sentence if imposes on you for the new felony, the Court may impose a prison term, subject to a specified maximum, for the violation.

{¶11} We can find no basis for sustaining error with respect to the assessing of PRC.

{¶12} R.C. 2929.19(B)(3)(e) reads:

(3) Subject to division (B)(4) of this section, if the sentencing court determines at the sentencing hearing that a prison term is necessary or required, the court shall do all of the following:

* * *

(e) Notify the offender that, if a period of supervision is imposed following the offender's release from prison, as described in division (B)(3)(c) or (d) of this section, and if the offender violates that supervision or a condition of post-release control imposed under division (B) of section 2967.131 [2967.13.1] of the Revised Code, the parole board may impose a prison term, as part of the sentence, of up to

one-half of the stated prison term originally imposed upon the offender. * * *

{¶13} The statute was scrupulously followed. Counsel's assignment of error is overruled.

{¶14} Koester's own assigned errors have no merit. As to the first assignment of error, there was no fiction with respect to the plea offer and no error in the indictment. Robbery includes an attempted theft offense where force is threatened or used. Threatening while committing a theft offense is not always a threat of physical harm as opposed to force; so, PRC is optional.

{¶15} This assignment of error is overruled.

{¶16} Koester might not serve any PRC prison time if he can refrain from committing more felonies after he serves this prison sentence.

{¶17} Koester's second assignment of error is overruled.

{¶18} As to the third assignment of error, Judge McIntosh scrupulously followed Crim.R. 11 in accepting Koester's guilty plea. The judge did not need to do more.

{¶19} This assignment of error is overruled.

{¶20} Koester, at the time he entered his plea, indicated his complete satisfaction with his counsel in the trial court. Counsel did not refuse to subpoena witnesses, unspecified by Koester. Koester was pursued from the area of the robbery and found with the money he stole in the car. Three eyewitnesses identified him almost immediately after the robbery. His guilt could not be legitimately contested. Counsel was as effective as counsel could be, given the underlying facts.

{¶21} Koester's fourth assignment of error is overruled.

{¶22} Nothing in the record indicates or implies that Koester did not know it was wrong to commit a robbery. Koester may have mental health issues, but he is not legally insane under Ohio law. He can tell the difference between right and wrong.

{¶23} Koester's fifth assignment of error is overruled.

{¶24} Koester had been rejected for the community based correctional facility ("CBCF") twice before. He knew or had to know that he was an unlikely candidate for acceptance into the program on this third occasion. Judge McIntosh did what Koester wanted—submit him for consideration anyway. No manipulation occurred.

{¶25} Koester's sixth assignment of error is overruled.

{¶26} Koester was incarcerated as a result of his failure to abide by the terms of a previous period of PRC. A bond hearing would have accomplished nothing. Nothing in the record demonstrates an ability to pay private counsel.

{¶27} Koester's seventh assignment of error is overruled.

{¶28} As noted previously, Koester indicated complete satisfaction with his lawyer at the time the plea was entered. New counsel could not change the facts establishing Koester's guilt.

{¶29} Koester's eighth assignment of error is overruled.

{¶30} A transcript of proceedings was provided at no cost to Koester's appellate counsel. Koester obviously received a copy, as evidenced by his many quotes from the transcript in his pro se brief.

{¶31} The trial court did not err by refusing to order other transcripts.

{¶32} Koester's ninth assignment of error is overruled.

{¶33} All of the assignments of error before us having been overruled, the judgment and sentence of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BROWN and KLATT, JJ., concur.
