

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2009-08-218
- vs -	:	<u>OPINION</u>
	:	5/24/2010
JUDAH HARGROVE,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2007-08-1356

Robin N. Piper, Butler County Prosecuting Attorney, Lina N. Alkamhawi, Government Services Center, 315 High Street, 11th Fl., Hamilton, Ohio 45011, for plaintiff-appellee

Brian K. Harrison, P.O. Box 80, Monroe, Ohio 45050, for defendant-appellant

BRESSLER, J.

{¶1} Defendant-appellant, Judah Hargrove, appeals from his conviction in the Butler County Court of Common Pleas for one count of escape. For the reasons outlined below, we affirm in part, reverse in part, and remand for further proceedings.

{¶2} On August 15, 2007, appellant was indicted on one count of escape in violation of R.C. 2921.34(A)(1), a second-degree felony. On July 28, 2009, after a number of delays, and after the trial court granted his motion to waive counsel, appellant pled guilty to an amended count of escape, a third-degree felony, and was sentenced to

serve two years in prison.

{¶13} Appellant now appeals from his conviction and sentence, raising two assignments of error.

{¶14} Assignment of Error No. 1:

{¶15} "APPELLANT'S GUILTY PLEA WAS NOT MADE KNOWINGLY, INTELLIGENTLY, OR VOLUNTARILY."

{¶16} In his first assignment of error, appellant argues that the trial court erred by accepting his guilty plea because it was not knowingly, intelligently, and voluntarily made. We disagree.

{¶17} When a defendant enters a guilty plea in a criminal case, the plea must be knowingly, intelligently, and voluntarily made. *State v. Phillips*, Butler App. No. CA2008-05-126, 2009-Ohio-1448, ¶10; *State v. Engle*, 74 Ohio St.3d 525, 527, 1996-Ohio-179. The failure on any of those points renders enforcement of the plea unconstitutional under both the United States Constitution and the Ohio Constitution. *State v. Douglass*, Butler App. Nos. CA2008-07-168, CA2008-08-199, 2009-Ohio-3826, ¶9. To ensure that a guilty plea conforms to these high standards, the trial court must engage the defendant in a colloquy in accordance with Crim.R. 11 that conveys "accurate information to the defendant so that the defendant can understand the consequences of his or her decision and enter a valid plea." *State v. Fuller*, Butler App. No. CA2008-09-240, 2009-Ohio-5068, ¶8, quoting *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, ¶26; Crim.R. 11(C)(2).

{¶18} During the trial court's July 28, 2009 plea hearing, the following exchange occurred:

{¶19} "THE COURT: * * * [I]f you go ahead and plead out today to a felony of the third degree escape, then you are not going to be allowed to appeal the decision [to

overrule your motion to dismiss] I just made. Do you understand that?"

{¶10} "[APPELLANT]: Yeah, I do and I do it reluctantly.

{¶11} "THE COURT: But you are doing it?

{¶12} "[APPELLANT]: I have no – I'm doing it out of fear because I mean if –

{¶13} "THE COURT: Are you doing it voluntarily, you are not being coerced into it other than the facts of life, I guess.

{¶14} "[APPELLANT]: Coerced to the extent that if I take the risk, and do I run the gamut of going to trial – it's going to be limited to escape. And the factual – technically [the prosecutor's] right.

{¶15} "I mean technically I did escape or I mean, abscond, and the parole officer opted to file a complaint against me for escape. So I would be found guilty and face eight years, and have to go through a long, drawn-out process of appeal and for that reason I am entering a guilty plea.

{¶16} "THE COURT: Let me put this in my words and you tell me if I am saying it right. You are knowledgeable about the options here, and you are looking at the various options, and you believe this is your best option.

{¶17} "[APPELLANT]: Trying to cut my losses."

{¶18} Following this exchange, the trial court informed appellant of his rights as provided by Crim.R. 11(C)(2) and asked if he chose to give up those rights and pled guilty, to which he responded affirmatively. Appellant then signed a written waiver and plea form that indicated, among other things, he was entering his guilty plea voluntarily and that he understood the effect his plea had upon his right to appeal.

{¶19} After a thorough review of the record, we find it clear that appellant's responses at the plea hearing and his signature on the written waiver and plea form confirm that he had full knowledge of the consequences of entering his guilty plea. See

State v. Taylor, Madison App. No. CA2007-12-037, 2009-Ohio-924, ¶58; *State v. Walker*, Butler App. No. CA2005-12-519, 2006-Ohio-5197, ¶8-11. In turn, although appellant claims that he "was not provided with clear answers" regarding the effect of his guilty plea upon his ability to "appeal various constitutional issues," there is nothing in the record to indicate appellant somehow misunderstood the ramifications of his guilty plea. Therefore, because we find his guilty plea was knowingly, intelligently, and voluntarily made, appellant's first assignment of error is overruled.

{¶20} Assignment of Error No. 2:

{¶21} "THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT DECLINED TO DETERMINE APPELLANT'S JAIL TIME CREDIT AT SENTENCING."

{¶22} In his second assignment of error, appellant argues that "the trial court erred by failing to determine at sentencing Appellant's entitlement to jail time credit." The state concedes, and we agree, that this matter should be remanded to the trial court so that it, not the prosecutor, can properly determine the amount of jail time credit appellant should be afforded. See *State v. Mills*, Franklin App. No. 09AP-198, 2009-Ohio-6273, ¶7; *State ex rel. Rankin v. Ohio Adult Parole Auth.*, 98 Ohio St.3d 476, 2003-Ohio-2061, ¶7; see, also R.C. 2967.191; R.C. 2949.12; Ohio Adm.Code 5120-2-04(B). Therefore, appellant's second assignment of error is sustained and this matter is remanded to the trial court to make a factual determination regarding the calculation and application of jail time credit.

{¶23} Judgment affirmed in part, reversed in part, and remanded for further proceedings.

YOUNG, P.J., and HENDRICKSON, J., concur.

