[Cite as *In re R.D.G.*, 2011-Ohio-6018.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

IN THE MATTER OF:	:	
R.D.G.	:	CASE NO. CA2010-12-323
	:	O P I N I O N 11/21/2011
	:	
	:	

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
JUVENILE DIVISION
Case No. JV2010-2174

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HUTZEL, J.

{¶1} Appellant, R.D.G., appeals his delinquency adjudication by the Hamilton County Juvenile Court for failure to comply with a police officer. Appellant also appeals the judgment of the Butler County Court of Common Pleas, Juvenile Division, subsequently committing him to the Ohio Department of Youth Services (DYS).

{¶2} On September 19, 2010, appellant was charged in Hamilton County with one count of failure to comply with a police officer in violation of R.C. 2921.331(B) and (C), a felony of the third degree if committed by an adult. Appellant was 16 years old at the time

the charge was filed. On September 29, 2010, during an adjudicatory hearing conducted by the Hamilton County Juvenile Court, appellant entered an admission to the charge. He was subsequently adjudicated to be a delinquent. The case was then transferred to the Butler County Court of Common Pleas, Juvenile Division (juvenile court), for disposition since appellant lives in Butler County. On November 15, 2010, following a hearing, the juvenile court committed appellant to DYS for a minimum period of six months and a maximum period not to exceed his 21st birthday.

{¶3} Appellant now appeals his adjudication and sentence, raising three assignments of error.

{¶4} Assignment of Error No. 1:

{¶5} "THE TRIAL COURT PLAINLY ERRED AND VIOLATED THE YOUTH'S CONSTITUTIONAL RIGHTS WHEN IT TOOK THE YOUTH'S PLEA BECAUSE IT FAILED TO COMPLY WITH JUVENILE RULE 29."

{¶6} Appellant argues the Hamilton County Juvenile Court failed to substantially comply with the requirements of Juv.R. 29(D) when it accepted his plea of admission. We disagree.

{¶7} Pursuant to Juv.R. 29(D), a juvenile court "may refuse to accept an admission and shall not accept an admission without addressing the party personally and determining both of the following: (1) The party is making the admission voluntarily with understanding of the nature of the allegations and the consequences of the admission; (2) The party understands that by entering an admission the party is waiving the right to challenge the witnesses and evidence against the party, to remain silent, and to introduce evidence at the adjudicatory hearing." In other words, the court must perform an on-the-record exchange with the juvenile to determine whether his or her admission is knowing, intelligent, and voluntary. See *In re M.T.*, Madison App. No. CA2006-04-018, 2007-Ohio-2446.

{¶8} "[I]n a juvenile delinquency case, the preferred practice is strict compliance with Juv.R. 29(D). [H]owever, * * * if the trial court substantially complies with Juv.R. 29(D) in accepting an admission by a juvenile, the plea will be deemed voluntary absent a showing of prejudice by the juvenile or a showing that the totality of the circumstances does not support a finding of a valid waiver. For purposes of juvenile delinquency proceedings, substantial compliance means that in the totality of the circumstances, the juvenile subjectively understood the implications of his plea." *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, ¶113.

{¶9} "In order to substantially comply with Juv.R. 29(D)(1), courts have found that '[a] defendant need not be informed of every element of the charge brought against him, but he must be made aware of the circumstances of the crime.' Additionally, courts have found that there is a presumption, where a defendant is represented by counsel, that counsel informed the defendant of the nature of the charges." *In re Keeling*, Allen App. No. 1-09-51, 2010-Ohio-1713, ¶15. (Internal citations omitted.)

{¶10} If a trial court fails to substantially comply with Juv.R. 29(D), the adjudication must be reversed to allow the party to "plead anew." *In re M.T.*, 2007-Ohio-2446 at ¶31. We review whether a court has substantially complied with Juv.R. 29(D) de novo. See *In re L.C.*, Cuyahoga App. No. 90390, 2008-Ohio-917.

{¶11} Upon reviewing the record, we find that under the totality of the circumstances, the record shows that appellant subjectively understood the implications of his admission and the rights being waived. Appellant was represented by counsel during the adjudicatory hearing. During the hearing, the Hamilton County Juvenile Court personally addressed appellant, reviewed the charge of failure to comply with a police officer, discussed the possible penalties it could impose as punishment, and reviewed with appellant the rights he would be waiving. Accordingly, we find that the Hamilton County Juvenile Court substantially

complied with Juv.R. 29(D) before it accepted appellant's admission. Appellant's first assignment of error is overruled.

{¶12} Assignment of Error No. 2:

{¶13} "THE TRIAL COURT PLAINLY ERRED AND ABUSED ITS DISCRETION WHEN IT VERBALLY ORDERED THE YOUTH TO STAY AWAY FROM HAMILTON COUNTY."

{¶14} At the end of the adjudicatory hearing in the Hamilton County Juvenile Court, the magistrate warned appellant, "do you know we don't want you in Hamilton County?" and admonished him to "stay away." Appellant challenges the verbal order on the ground it was improper and an abuse of discretion.

{¶15} It is well-established that a trial court speaks only through its journal entries and not by oral pronouncement or through decisions. *State v. Smith*, Butler App. No. CA2009-02-038, 2010-Ohio-1721, ¶59, citing *Schenley v. Kauth* (1953), 160 Ohio St. 109. The magistrate's oral admonishment was never journalized, nor was it incorporated into the adjudication decision or the disposition order. An order is not rendered by an oral pronouncement from the bench. See *State v. Dixon* (Dec. 27, 1984), Cuyahoga App. Nos. 48253 and 48254. Consequently, appellant is not bound by the magistrate's oral admonishment. Id. Appellant's second assignment of error is overruled.

{¶16} Assignment of Error No. 3:

{¶17} "THE TRIAL COURT PLAINLY ERRED AND ABUSED ITS DISCRETION IN IMPOSING SENTENCE WITHOUT PERMITTING THE YOUTH TO ADDRESS THE COURT PRIOR TO SENTENCE BEING IMPOSED."

{¶18} Appellant argues the juvenile court erred by denying him his right of allocution at the dispositional hearing. Appellant asserts he "was not given an opportunity to speak on his own behalf prior to the Court's entering [its] dispositional order." We agree.

{¶19} Crim.R. 32(A)(1) provides that before imposing a sentence in a criminal trial, a trial court shall "address the defendant personally and ask if he or she wishes to make a statement in his or her own behalf or present any information in mitigation of punishment." The right of allocution under Crim.R. 32(A)(1), which must be painstakingly adhered to by trial courts, does not merely give the defendant a right of allocution; it imposes an affirmative requirement on the trial court to ask the defendant if he or she wishes to exercise that right. See *State v. Haynes*, Butler App. No. CA2010-10-273, 2011-Ohio-5743; *State v. Brown*, 166 Ohio App.3d 252, 2006-Ohio-1796. A Crim.R. 32 "inquiry is much more than an empty ritual: it represents a defendant's last opportunity to plead his case or express remorse." *Brown* at ¶8, quoting *State v. Green*, 90 Ohio St.3d 352, 359-360, 2000-Ohio-182. Thus, when a trial court imposes a sentence without first asking the defendant if he or she wishes to exercise their right of allocution, "resentencing is required unless the error is invited error or harmless error." *State v. Campbell*, 90 Ohio St.3d 320, 326, 2000-Ohio-183.

{¶20} The right of allocution is "both absolute and not subject to waiver due to a defendant's failure to object." *State v. Collier*, Clark App. Nos. 2006 CA 102, 2006 CA 104, 2007-Ohio-6349, ¶92. A juvenile defendant has a right of allocution before disposition. *In re K.S.J.*, Montgomery App. No. 24387, 2011-Ohio-2064, ¶10; *Garfield Hts. v. J.P.*, Cuyahoga App. No. 87166, 2006-Ohio-4590, ¶8.

{¶21} The record shows that appellant's right of allocution was violated. Contrary to the state's disingenuous claim, (1) appellant never declined on the record to say anything in his own behalf, and (2) the juvenile court did not ask appellant if he wished to address the court in his own behalf. Nor is it "clear that Appellant did not wish to address the juvenile court" because he was nervous.

{¶22} While the juvenile court did, at times, personally address appellant during the dispositional hearing (asking him about his residence and school credits), the court never

personally asked appellant if he wanted to make a statement in his own behalf or present any mitigating information before disposition. Rather, following a recommendation from the probation department and statements from appellant's parents, and upon giving the state and defense counsel an opportunity to address the court, the juvenile court then proceeded directly to disposition.

{¶23} We therefore hold that appellant's right of allocution was violated when the juvenile court failed to personally ask him if he wished to exercise his right of allocution before disposition as mandated by Crim.R. 32(A)(1). Accordingly, appellant's disposition is vacated, and the matter is remanded to the juvenile court for disposition. Upon remand, the juvenile court is instructed to enter disposition of appellant after directly asking him "if he wishes to make a statement in his own behalf or present any information in mitigation of punishment." See *Haynes*, 2011-Ohio-5743 at ¶47; Crim.R. 32(A)(1).

{¶24} Appellant's third assignment of error is well-taken and sustained.

{¶25} The judgment of the Hamilton County Juvenile Court adjudicating appellant a delinquent is affirmed, appellant's disposition in the juvenile court is vacated, and the matter is remanded to the juvenile court for a dispositional hearing wherein appellant is afforded the right of allocution.

POWELL, P.J., and RINGLAND, J., concur.