

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

STATE OF OHIO,	:	CASE NO. CA2014-12-142
Plaintiff-Appellee,	:	
	:	<u>OPINION</u>
- VS -	:	8/3/2015
	:	
TIMOTHY E. MOSLEY,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 14CR29825

David P. Fornshell, Warren County Prosecuting Attorney, Michael Greer, 500 Justice Drive, Lebanon, Ohio 45036, for plaintiff-appellee

Diehl & Hubbell, LLC, Martin E. Hubbell, 304 East Warren Street, Lebanon, Ohio 45036, for defendant-appellant

S. POWELL, J.

{¶ 1} Defendant-appellant, Timothy E. Mosley, appeals from his conviction in the Warren County Court of Common Pleas following his guilty plea to a variety of charges, including one count of aggravated murder. For the reasons outlined below, we affirm.

{¶ 2} On February 24, 2014, the Warren County Grand Jury returned an indictment charging Mosley with aggravated murder, kidnapping, aggravated robbery, aggravated

burglary, safecracking, grand theft of a firearm, tampering with evidence, and abuse of a corpse. The aggravated murder charge also included a death penalty specification. According to the bill of particulars, the charges stemmed from allegations that Mosley and his co-defendant, Austin G. Myers, executed a plan to kidnap, rob and kill Justin M. Back at Back's Warren County home before disposing of Back's body in a remote wooded area located in Preble County. After being advised of his *Miranda* rights, Mosley confessed, providing a detailed account of his and Myers' involvement in the planning and execution of Back's kidnapping and murder.

{¶ 3} On October 17, 2014, once the trial court denied Mosley's motion to suppress, Mosley entered into a plea agreement. As part of his plea agreement, and as relevant here, Mosley agreed to plead guilty to aggravated murder with a jointly recommended maximum sentence of life in prison without the possibility of parole in exchange for the death penalty specification being dismissed. After accepting Mosley's guilty plea, which the trial court found to be knowingly, intelligently and voluntarily made, the trial court sentenced Mosley to the jointly recommended maximum sentence of life in prison without the possibility of parole. Mosley now appeals from his conviction, raising one assignment of error for review.

{¶ 4} THE TRIAL COURT ERRED WHEN IT ACCEPTED APPELLANT'S PLEA WITHOUT ENSURING APPELLANT UNDERSTOOD THE EFFECT OF HIS GUILTY PLEA, IN VIOLATION OF APPELLANT'S DUE PROCESS RIGHTS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND ARTICLE 1, SECTION 16 OF THE OHIO CONSTITUTION.

{¶ 5} In his single assignment of error, Mosley argues the trial court erred by accepting his guilty plea to the aggravated murder charge because it was not knowingly, intelligently and voluntarily made. We disagree.

{¶ 6} "When a defendant enters a guilty plea in a criminal case, the plea must be

made knowingly, intelligently, and voluntarily, and 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. Butcher*, 12th Dist. Butler No. CA2012-10-206, 2013-Ohio-3081, ¶ 8, citing *State v. Douglass*, 12th Dist. Butler Nos. CA2008-07-168 and CA2008-08-199, 2009-Ohio-3826, ¶ 9. To ensure that a defendant's plea is entered knowingly, intelligently and voluntarily, the trial court must engage the defendant in a colloquy pursuant to Crim.R. 11(C). *State v. Henson*, 12th Dist. Butler No. CA2013-12-221, 2014-Ohio-3994, ¶ 10.

{¶ 7} Pursuant to Crim.R. 11(C)(2), the trial court may not accept a defendant's guilty plea without first addressing the defendant personally and:

(a) Determining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.

(b) Informing the defendant of and determining that the defendant understands the effect of the plea of guilty or no contest, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.

(c) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant's favor, and to require the state to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself.

{¶ 8} A guilty plea is invalid if the trial court does not strictly comply with Crim.R. 11(C)(2)(c), which requires the trial court to verify the defendant understands the constitutional rights that he is waiving. *State v. Shavers*, 12th Dist. Butler No. CA2014-05-119, 2015-Ohio-1485, ¶ 9. However, the trial court need only substantially comply with the nonconstitutional notifications required by Crim.R. 11(C)(2)(a) and (b), which includes notification of the maximum penalty involved. *Id.* Under the substantial compliance

standard, the appellate court must review the totality of the circumstances surrounding the defendant's plea and determine whether the defendant subjectively understood the effects of his plea. *State v. Givens*, 12th Dist. Butler No. CA2014-02-047, 2015-Ohio-361, ¶ 12.

{¶ 9} In this case, while it is undisputed the trial court strictly complied with the constitutional requirements of Crim.R. 11(C)(2)(c), Mosley argues the trial court failed to substantially comply with the nonconstitutional notifications required by Crim.R. 11(C)(2)(b). In support of this claim, Mosley argues the trial court erred by not properly advising him of all the potential sentencing options available if he entered a guilty plea to the aggravated murder charge; namely, that his guilty plea included a potential minimum sentence of 20 years to life in prison. According to Mosley, by not explicitly advising him of all the potential sentencing options, the trial court failed to properly advise him of the effect of his guilty plea, thereby rendering his guilty plea invalid.

{¶ 10} Mosley, however, has misinterpreted the otherwise straightforward nonconstitutional notification requirements of Crim.R. 11(C)(2)(b). "To satisfy the effect-of-plea requirement under Crim.R. 11(C)(2)(b), a trial court must inform the defendant, either orally or in writing, of the appropriate language in Crim.R. 11(B)." *State v. Jones*, 2d Dist. Montgomery No. 25688, 2014-Ohio-5574, ¶ 8, citing *State v. Jones*, 116 Ohio St.3d 211, 2007-Ohio-6093, ¶ 25, 51. Thus, in order to meet the requirements of Crim.R. 11(C)(2)(b), the trial court was not required to advise Mosley as to "every conceivable effect" of his guilty plea. *State v. Satterwhite*, 2d Dist. Montgomery No. 23142, 2009-Ohio-6593, ¶ 49.

{¶ 11} Rather, the trial court was merely required to advise Mosley that his guilty plea served as a complete admission of his guilt in accordance with Crim.R. 11(B)(1), see *State v. Dotson*, 12th Dist. Preble No. CA2007-11-025, 2008-Ohio-4965, ¶ 20, something which the trial court did at Mosley's change of plea hearing. As the trial court stated:

THE COURT: * * * If you enter a plea of guilty to this charge,

nobody has to prove anything to anybody. You're going to admit that you did it and we're going to get on to the matter of the sentence, is that what you want to do?

DEFENDANT MOSLEY: Yes, Your Honor.

Thereafter, once the state read the facts into the record, the trial stated:

THE COURT: Mr. Mosley, did you hear that facts that form the basis of the charge against you?

DEFENDANT MOSLEY: Yes, Your Honor.

THE COURT: Do you admit that those facts are true?

DEFENDANT MOSLEY: Yes, Your Honor.

{¶ 12} As noted above, "[t]he right to be informed that a guilty plea is a complete admission of guilt is nonconstitutional and therefore is subject to review under a standard of substantial compliance." *State v. Griggs*, 103 Ohio St.3d 85, 2004-Ohio-4415, ¶ 12. Based on the exchanges between the trial court and Mosley, we find it clear that the trial court, at a minimum, substantially complied with the nonconstitutional notification requirements of Crim.R. 11(C)(2)(b) at Mosley's change of plea hearing. See, e.g., *State v. Middleton*, 12th Dist. Butler No. CA2010-07-173, 2011-Ohio-1631, ¶ 8-25 (finding the trial court, at minimum, substantially complied with the requirements of Crim.R. 11(C)(2)(b) where the trial court informed appellant that her guilty plea constituted a complete admission of her guilt). As we have stated previously, "[t]his court will not expand the requirements of Crim.R. 11(C)(2)(b) beyond the parameters established by law." *Dotson*, 2008-Ohio-4965 at ¶ 27. Therefore, Mosley's claim that the trial court failed to substantially comply with the nonconstitutional notification requirements found in Crim.R. 11(C)(2)(b) is without merit.

{¶ 13} We also find the trial court, at a minimum, substantially complied with the nonconstitutional notification requirements of Crim.R. 11(C)(2)(a). Although Mosley argues it was error for the trial court not to advise him that aggravated murder also included a potential

minimum sentence of 20 years to life in prison, "nothing in Crim.R. 11 requires the trial court to advise the defendant of the minimum sentence." *State v. Mackey*, 8th Dist. Cuyahoga No. 99390, 2013-Ohio-4698, ¶ 8, citing *State v. Miller*, 10th Dist. Franklin No. 96APA11-165, 1997 WL 360882 (June 30, 1997). Rather, Crim.R. 11(C)(2)(a) only requires the trial court to inform a defendant of "the maximum penalty involved."

{¶ 14} Pursuant to R.C. 2929.03(A)(1)(a), the maximum penalty involved for aggravated murder absent a death penalty specification is life in prison without the possibility of parole. As the record reveals, the trial court properly informed Mosley of the maximum penalty on at least three occasions – at his suppression hearing, at his change of plea hearing, as well as part of his change of plea form. See, e.g., *State v. Abuhilwa*, 9th Dist. Summit No. 16787, 1995 WL 134746, *2 (Mar. 29, 1995) (holding that because the plea agreement removed the death penalty specification from an aggravated murder charge "the trial court fulfilled its obligation under Crim.R. 11(C) by explaining that the maximum penalty was life imprisonment"). For instance, as the trial court stated at Mosley's change of plea hearing, "[y]ou're going to be entering a plea of guilty to one count of aggravated murder which is a special felony, punishable by up to life without parole." Considering the parties' plea agreement specifically included a jointly recommended maximum sentence of life in prison without the possibility of parole, something which the trial court confirmed with both parties prior to accepting Mosley's guilty plea, this clearly satisfies the requirements of Crim.R. 11(C)(2)(a).

{¶ 15} In light of the foregoing, because it is undisputed that the trial court strictly complied with the requirements of Crim.R. 11(C)(2)(c) regarding the waiver of Mosley's constitutional rights, and having found the trial court, at a minimum, substantially complied with the nonconstitutional notification requirements of Crim.R. 11(C)(2)(a) and (b), we find no error in the trial court's decision accepting Mosely's guilty plea to aggravated murder as his

plea was knowingly, intelligently and voluntarily made. Mosley's single assignment of error is therefore without merit and overruled.

{¶ 16} Judgment affirmed.

PIPER, P.J., and HENDRICKSON, J., concur.