[Cite as *State v. Lane*, 2002-Ohio-1893.]

IN THE COURT OF APPEALS FOR GREENE COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	
v.	:	C.A. Case Nos. 2001-CA-92 and Case No. 2001-CA-93
RIKKI LANE	:	T.C. Case Nos. 01-CRB-1318 and 00-CRB-4018
Defendant-Appellant	:	

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O P I N I O N

Rendered on the 19th day of April, 2002.

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FAIN, J.

{¶1} Defendant-appellant Rikki Lane appeals from her conviction and sentence, following a guilty plea, for Attempted Assault. She also appeals from the revocation of her probation for a prior conviction for Theft. Lane asserts that her plea of guilty to Attempted Assault was not knowing and voluntary, that her trial

counsel was ineffective, that the trial court erred by denying her motion to vacate her plea, without a hearing, and that the trial court erred by revoking her probation on the prior Theft offense.

{¶2} Although Lane did appear to protest her innocence of the Attempted Assault during the plea hearing, after she had tendered her plea, the trial court was not required to address Lane personally and determine that her plea was knowingly and voluntarily tendered, Attempted Assault being a petty offense. Furthermore, the mere fact that Lane was disappointed in her hope that the trial judge would accept the prosecutor's recommendation of a suspended sentence did not render her plea other than knowing and voluntary, in view of the trial court's clear statement, on the record, that the court would not be bound by the prosecutor's recommendation.

{¶3} Lane predicates her assertion that her trial counsel was ineffective upon his failure to have talked to the judge before the tendering of the plea, to determine what sentence the trial judge would likely impose. In the absence of any indication in this record that the trial judge would have been amenable to a discussion, before Lane tendered her plea, of the likely sentence, we cannot find that trial counsel was ineffective for having failed to pursue that course.

{¶4} Finally, the only error Lane asserts with respect to the revocation of her probation on the prior Theft offense is that the revocation is predicated upon her conviction for Attempted Assault. In view of our disposition of Lane's appeal from her Attempted Assault conviction, her argument concerning the revocation of her probation necessarily fails.

{¶5} Accordingly, both judgments of the trial court – Lane's conviction and

sentence for Attempted Assault, and the revocation of Lane's probation for the prior theft offense – are ***Affirmed.***

I

{¶6} Lane and her sister, Arika Lane, were charged with Assault upon Jessica Isaac. Following her arraignment, Lane was scheduled to be tried on August 6, 2001. Her sister, Arika, was scheduled to be tried on July 11, 2001. On July 10, 2001, the day before Arika Lane's scheduled trial, David Stenson filed a notice of appearance and request for a trial continuance, on behalf of both sisters. This motion was denied.

{¶7} The next day, July 11, 2001, the day of Arika Lane's scheduled trial, the two sisters appeared before the trial judge. When the trial judge began discussing the matter with Arika Lane, their attorney was not present, but he arrived shortly thereafter. Their attorney advised the trial court that he and the prosecutor had entered into a plea agreement, whereby both sisters would plead guilty to Attempted Assault. The plea hearing continued as follows:

{¶8} "THE COURT: All right. It's my understanding that the prosecutor is willing to amend these two charges to attempted assault; is that right?

{¶9} "MR. LEWIS [representing the State]: That is correct, Your Honor. In an attempt to resolve the matter, we are reducing the charge to attempted assault as an M-2.

{¶10} "THE COURT: Mr. Stenson, does your client, Arika Lane, wish to accept that offer?

{¶11} "MR. STENSON: Yes, she does, Your Honor.

{¶12} "THE COURT: Is she pleading – how is she pleading?

{¶13} "MR. STENSON: She is pleading guilty to the charge.

{¶14} "THE COURT: And how about Rikki Lane?

{¶15} "MR. STENSON: Same thing, Your Honor.

{¶16} "THE COURT: Okay.

{¶17} "Now, it's important that Rikki and Arika both understand their rights and the rights that they are giving up, if they plead guilty. So I want you both to listen to this. Each of you has the right to remain silent as to the merits of the charge; the right to a trial to a judge; the right to a trial to a jury, although that was not requested timely. You have the right to an – you have Counsel. You have the right to subpoena witnesses, to cross-examine witnesses and the right to require the City of Xenia to prove every part of this charge beyond a reasonable doubt.

{¶18} "Do you understand that, Arika?

{¶19} "DEFENDANT ARIKA LANE: Yes, ma'am.

{¶20} "THE COURT: Do you understand that, Rikki?

{¶21} "DEFENDANT RIKKI LANE: Yes, ma'am.

{¶22} "THE COURT: If you plead guilty to attempted assault, a second degree misdemeanor, you are giving up those rights.

{¶23} "Do you understand that Arika?

{¶24} "DEFENDANT ARIKA LANE: Yes.

{¶25} "THE COURT: Do you understand that Rikki?

{¶26} "DEFENDANT RIKKI LANE: Yes, ma'am.

{¶27} "THE COURT: The maximum legal penalty for this offense for each of you would be 90 days in jail and a $750 fine.

{¶28} "Do you understand that, Arika?

{¶29} "DEFENDANT ARIKA LANE: Yes, ma'am.

{¶30} "THE COURT: And Rikki?

{¶31} "DEFENDANT RIKKI LANE: Yes, ma'am.

{¶32} "THE COURT: The prosecutor makes a recommendation. The prosecutor is not the sentencing person. He makes a recommendation. He negotiates with your Counsel. His recommendation carries some weight. If I disagree with that recommendation, I can give you up to 90 days in jail and a $750 fine.

{¶33} "Do you understand that, Arika?

{¶34} "DEFENDANT ARIKA LANE: Yes, ma'am.

{¶35} "THE COURT: Do you understand that, Rikki?

{¶36} "DEFENDANT RIKKI LANE: Yes, ma'am.

{¶37} "THE COURT: Knowing all of that, do you want to plead guilty to attempted assault, a second degree misdemeanor, Arika?

{¶38} "DEFENDANT ARIKA LANE: Yes, ma'am.

{¶39} "THE COURT: Rikki?

{¶40} "DEFENDANT RIKKI LANE: Yes, ma'am."

{¶41} At this point, the prosecutor excused himself to attend to other matters, and the trial court heard a statement from the victim advocate's office.

{¶42} The trial court then made an inquiry of Rikki Lane concerning the circumstances of the offense:

{¶43} "THE COURT: . . So I'm going to ask Rikki Lane, what was this about?

{¶44} "DEFENDANT RIKKI LANE: It was – what was the fight about?

{¶45} "THE COURT: Yes.

{¶46} "DEFENDANT RIKKI LANE: From – I don't know what it was about, but, from the statement that I have received that they made out, they had wrote out a statement that it was over a guy.

{¶47} "THE COURT: Okay. Wait a minute. You were involved in this and you don't know what it was about?

{¶48} "DEFENDANT RIKKI LANE: No, I was not involved, ma'am. I was there.

{¶49} "THE COURT: You just pled guilty to attempted assault.

{¶50} "DEFENDANT RIKKI LANE: Yes, ma'am.

{¶51} "THE COURT: And you are telling me you did not do that?

{¶52} "MR. STENSON: Judge, she was – her statement is that she was there. In order to get this thing taken care of – she never threw a punch nor physically hit this young lady.

{¶53} "DEFENDANT RIKKI LANE: Correct.

{¶54} "THE COURT: Let me ask her, then, and I'll ask her to be the one that answers.

{¶55} "What was the dispute about? You don't know?

{¶56} "DEFENDANT RIKKI LANE: A man, a boy.

{¶57} "THE COURT: Who was the dispute between?

{¶58} "DEFENDANT RIKKI LANE: An ex-boyfriend, I guess, one of theirs.

{¶59} "THE COURT: And –

{¶60} "DEFENDANT RIKKI LANE: And –

{¶61} "THE COURT: And who on your side?

{¶62} "DEFENDANT RIKKI LANE: Who on my side?

{¶63} "MR. STENSON: Your sister.

{¶64} "DEFENDANT RIKKI LANE: Okay, my sister. It was her and the lady or the young girl that was doing this to us or whatever. I guess the young lady that my sister had fought, okay, the guy now is

my sister's boyfriend now and was.

{¶65} "THE COURT: So that is a jealousy thing?

{¶66} "DEFENDANT RIKKI LANE: Yes, ma'am.

{¶67} "THE COURT: Is that right?

{¶68} "DEFENDANT ARIKA LANE: Yes, ma'am.

{¶69} There then followed a colloquy between the trial court and defense counsel, after which the trial court imposed sentence, as follows:

{¶70} "THE COURT: The bottom line is I can't tolerate this kind of violence and this kind of injury.

{¶71} "So I'm giving you each 80 days in jail and I'm –

{¶72} "MR. STENSON: Come here. Come back here. Relax, relax, relax. Listen.

{¶73} "THE COURT: Nobody cries when the assault happens.

{¶74} "MR. STENSON: Listen, listen. Listen to the Judge.

{¶75} "THE COURT: And a $500 fine each because otherwise it minimizes it.

{¶76} "MR. STENSON: And –

{¶77} "THE COURT: You will probably not be in jail that long, but you are not going to go without getting jail time. The jail is going to release you because they are overcrowded. When you are released, you are on probation.

{¶78} "If these – if these victims – this victim and her sister get harassed anymore, we are going to look very closely at who harassed them. Do you understand that? So my suggestion to you is that you tell all your friends that these people are not to be approached. I am not penalizing you for that other behavior. I'm penalizing you because you approached these two girls and participated in them getting injured while they were trying to get away. This was not a mutual fight. This was an assault. Attempted assault is how it is convicted.

{¶79} "MR. STENSON: Judge, is there any mitigation as far as – is there any mitigation as far as these young ladies as far as the time is concerned? Again –

{¶80} "THE COURT: I'll talk to you in a second about this.

{¶81} "MS. SINGER: Will there be restitution and a no-contact order?

{¶82} "THE COURT: Yes, there's restitution.

{¶83} "Let's step out for a minute.

{¶84} Rikki Lane was on probation for a Theft offense. On July 13, 2001, following a hearing, her probation for that offense was revoked. It is clear that the revocation of probation was based, in part, upon Rikki Lane's conviction for Attempted Assault.

{¶85} Rikki Lane has appealed both from her conviction and sentence for Attempted Assault, and from the revocation of her probation on the prior Theft offense.

II

{¶86} Lane's First Assignment of Error is as follows:

{¶87} "DEFENDANT-APPELLANT'S PLEA OF GUILTY WAS NOT MADE VOLUNTARILY, KNOWINGLY AND/OR INTELLIGENTLY."

{¶88} In her argument in support of this assignment of error, Lane alludes to her protestation of innocence during the plea hearing. When a plea of guilty is tendered to a serious offense, defined in Crim.R. 2(C) as any felony, and any misdemeanor for which the penalty prescribed by law includes confinement for more than six months, a trial judge shall not accept a plea of guilty or no contest

without first addressing the defendant personally and determining that the defendant is making the plea voluntarily. Crim.R. 11(D). We have held that this requires, where there has been a protestation of innocence, that the trial court conduct some inquiry to determine whether the defendant's decision to plead guilty, notwithstanding his protestation of innocence, is based on a rational calculation of the likely consequence of going to trial. ***State v. Bowling*** (March 10, 1987), Montgomery App. No. 9925, unreported. However, there is no requirement that a trial judge personally determine that a defendant is making a plea of guilty or no contest voluntarily in a misdemeanor case involving a petty offense. Crim.R. 11(E). Accordingly, although we deem it good practice to conduct the kind of inquiry described in ***State v. Bowling, supra,*** even in misdemeanor cases involving petty offenses, it is not required by the Rule, and reversible error cannot be predicated upon the trial judge's having failed to conduct that inquiry.

{¶89} Lane states the essence of her argument as follows:

> **{¶90}** "After reading the entire transcript, it is obvious that the pleas of guilty by Defendant-Appellant and by her sister, were induced by false promises and assurances by the Prosecutor and Defense Counsel that they would receive no jail time. Obviously, Defendant-Appellant was unaware of the effect that her plea of guilty would have on her upcoming probation revocation hearing."

{¶91} There is a document in the record reflecting that the prosecutor was recommending, in the cases of both sisters, that they receive suspended sentences. However, the portion of the transcript of the disposition hearing quoted above reflects a clear statement by the trial judge that she would not be bound by the prosecutor's recommendation. Furthermore, the trial judge elicited from each

defendant her personal acknowledgment that she understood that the trial judge would not be bound by the prosecutor's recommendation.

{¶92} Under these circumstances, Lane had an understandable hope that the trial judge would follow the recommendation of the prosecutor, and suspend her sentence. However, the trial judge had made it clear to Lane that there was no assurance that the trial judge would follow that recommendation. Lane's disappointment at the trial judge not following the prosecutor's recommendation did not render Lane's plea other than knowing and voluntary.

{¶93} Lane suggests that the trial court was required to advise her of the effect that her guilty plea would likely have on her probation for the prior theft offense. Although the trial court is required, even in misdemeanor cases involving petty offenses, to inform the defendant of the effect of the plea of guilty, no contest, and not guilty, we have never construed that to include a requirement that the trial court advise a defendant of every potential collateral consequence of a guilty plea. In this case, it was, in fact, the same trial judge who heard the probation revocation issue two days after taking the guilty plea. In many cases, however, probation adversely affected by a guilty plea will not involve the same trial judge, or even the same jurisdiction.

{¶94} As far as Lane's contention that she was unaware of the effect that her plea of guilty to Attempted Assault might have on her probation revocation hearing, there is nothing in this record to reflect that she was unaware. She was obviously on notice of the probation revocation hearing, at which one of the grounds asserted for revocation was the pending Assault charge. We find it unlikely that

Lane, who was represented by the same counsel in both proceedings, was unaware of the possible adverse impact of her guilty plea.

{¶95} Lane's First Assignment of Error is overruled.

III

{¶96} Lane's Second Assignment of Error is as follows:

{¶97} "THE DEFENDANT-APPELLANT WAS INEFFECTIVELY REPRESENTED BY COUNSEL AND THEREFORE DENIED HER CONSTITUTIONALLY GUARANTEED RIGHTS UNDER THE SIXTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND HER RIGHTS UNDER THE OHIO CONSTITUTION."

{¶98} In support of this assignment of error, Lane first asserts that her trial counsel should have taken into consideration the consequences of her plea to Attempted Assault on the probation revocation hearing two days later. There is nothing in this record to reflect that trial counsel failed to take that into consideration.

{¶99} Lane next contends that her trial counsel "should have requested a side bar conference or an in chambers conference with [the trial judge] prior to accepting the plea agreement with the prosecutor. Defense counsel should have made certain that [the trial judge] would honor the plea bargain for no jail time and should have determined what significance a plea of guilty to attempted assault would have in the upcoming probation revocation hearing."

{¶100} An attorney admitted to the practice of law in Ohio is presumed competent. Lane has not directed our attention to any rule, law or case that would require a trial judge to inform a defendant considering a plea offer concerning the

sentence that would likely be imposed. In the absence of anything in the record to suggest that the trial judge in this case would have been amenable to a request for assurances, before the defendant tendered her plea, concerning the sentence that would be imposed, we cannot find that trial counsel was ineffective for having failed to request a discussion along those lines. Similarly, we cannot find that trial counsel was ineffective for having failed to request a discussion with the trial judge concerning the likely disposition of a probation revocation hearing before the hearing has taken place.

{¶101} Finally, Lane argues that her trial counsel "should have entered an 'Anders plea,'" and that "[w]hen [the trial judge] sentenced Defendant-Appellant to eighty days in jail, defense counsel should have immediately moved to vacate and/or withdraw her plea of guilty." As we noted in Part II, above, Lane's guilty plea was accompanied by a protestation of innocence, which is the essence of the ***Alford*** plea to which Lane is presumably referring. See ***North Carolina v. Alford*** (1970), 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162. We are not aware that Lane's trial counsel's having referred to her plea as an Alford plea would have made any difference, whatsoever in the disposition of her case. With respect to the contention that trial counsel was ineffective for not having ***immediately*** moved to vacate and/or withdraw Lane's plea of guilty, her trial counsel did move to vacate her plea. Because sentence had already been imposed, an immediate motion to vacate the plea would have been governed by the "to correct manifest injustice" standard set forth in Crim.R. 32.1. We can see no reason why Lane would have been better served by an immediate motion, at bar, to vacate her plea.

{¶102} Lane's Second Assignment of Error is overruled.

IV

{¶103} Lane's Third Assignment of Error is as follows:

{¶104} "THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO SET THE MOTION TO VACATE FOR A FULL HEARING, INSTEAD RULING SUMMARILY ON SAID MOTION."

{¶105} Lane's motion to vacate her plea contains the following argument:

{¶106} "When asked why she was pleading guilty, she indicated it was because Mr. Stenson told her to do so and that she would be given no jail time in accordance with the plea bargain between Mr. Stenson and the Prosecutor.

{¶107} "The Defendant was clearly deceived into pleading guilty based on the promise of no jail time. Prior to accepting the plea of guilty, the Court should have informed both the Prosecutor and the Defense Counsel and clearly should have informed the Defendant, that the Court would not accept that plea bargain."

{¶108} The transcript of the plea hearing contradicts the first assertion quoted above. The record does reflect that the prosecutor recommended a suspended sentence. However, the transcript of the plea hearing includes a clear statement by the trial judge that she would not be bound by the prosecutor's recommendation, followed by the trial judge's eliciting from Lane that Lane understood that the trial judge would not be bound by the prosecutor's recommendation. Therefore, even if the allegations set forth in Lane's motion to withdraw her plea are credited in full, they establish, at most, that she hoped, based upon the agreement that her trial counsel had made with the prosecutor, that the trial court would be lenient, and impose no jail time. Unfortunately for Lane, the trial court was not disposed to be lenient. A defendant's disappointment at the sentence imposed is not a proper

basis for the withdrawal of a plea. Furthermore, Lane has not directed our attention to any authority, and we are aware of none, for her proposition that the trial court was obliged to inform her, prior to accepting her plea, that jail time was going to be imposed notwithstanding the prosecutor's recommendation. A hearing on a post-sentence Crim. R. 32.1 motion to withdraw a plea is not required if the facts alleged by the defendant and accepted as true by the trial court would not require the court to permit a guilty plea to be withdrawn. ***State v. Blatnik*** (1984), 17 Ohio App.3d 201, 204.

{¶109} Lane's Third Assignment of Error is overruled.

V

{¶110} Lane's Fourth Assignment of Error is as follows:

{¶111} "THE TRIAL COURT ABUSED ITS DISCRETION BY REVOKING DEFENDANT-APPELLANT'S PROBATION."

{¶112} Lane's argument in support of this assignment of error is predicated upon the reversal of her conviction for Attempted Assault. Because we conclude that Lane's Attempted Assault conviction must be affirmed, it follows that there is no error in the revocation of her probation for the prior Theft offense.

{¶113} Lane's Fourth Assignment of Error is overruled.

VI

{¶114} All of Lane's assignments of error having been overruled, the judgment of the trial court, including both Lane's conviction and sentence for Attempted Assault and the revocation of Lane's probation for Theft, is ***Affirmed.***

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BROGAN and YOUNG, JJ., concur.

Copies mailed to:

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