[Cite as *State v. Sandlin*, 2009-Ohio-2742.]

IN THE COURT OF APPEALS FOR CLARK COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2008 CA 42
v.	:	T.C. NO. 2008 CR 343
CHARLES W. SANDLIN	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	
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O P I N I O N

Rendered on the 5th day of June, 2009.

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WOLFF, J. (by assignment)

{¶ 1} Charles Sandlin entered a negotiated plea of guilty to third degree felony complicity to robbery, reduced from the indicted offense of second degree felony complicity to robbery. After receiving a pre-sentence investigation report, the trial court sentenced Sandlin to

four years imprisonment. On appeal, Sandlin advances three assignments of error.

{¶ 2} "1) THE SENTENCING OF APPELLANT IN CLARK COUNTY CASE 08-CR-343 WAS IMPROPER AS APPELLANT NEITHER ENTERED A PLEA OF GUILTY NOR WAS CONVICTED BY A JURY IN THAT CASE.

{¶ 3} Sandlin contends that his plea of guilty and sentence should be vacated because he didn't enter a plea of guilty in case 08-CR-343. The notice of appeal in this case is from the final judgment in 08-CR-343.

{¶ 4} We reject this contention.

{¶ 5} Sandlin was originally indicted for second degree felony complicity to robbery in case 08-CR-177. The original indictment failed to allege the culpable mental state of recklessness and Sandlin was reindicted in case 08-CR-343 to cure that defect. The new indictment was served on Sandlin on the morning trial was scheduled to begin: April 29, 2008. It is clear from the plea proceedings on the afternoon of April 29, 2008 that the prosecutor intended to amend the indictment in 08-CR-343 to charge the lesser third degree felony offense of complicity to robbery and, in return for Sandlin's plea of guilty to that charge, dismiss the indictment on 08-CR-177. It is also clear that the trial court engaged Sandlin in the Crim.R. 11(C) colloquy in connection with 08-CR-343. After Sandlin entered his guilty plea the trial court announced its intention to dismiss 08-CR-177. Indeed, the trial court did dismiss 08-CR-177 on May 1, 2008, the entry of dismissal referring to the plea in 08-CR-343.

{¶ 6} The problem giving rise to this assignment is that the document containing Sandlin's executed "plea of guilty" and a "judgment entry of guilty" signed by the trial court contains the case number 08-CR-177. The document also bears a file date stamp and a

journalization stamp. It is on this basis that Sandlin claims he didn't enter a plea of guilty in 08-CR-343.

{¶ 7} While it has been said many times that a court speaks through its journal entries, that principle should not be applied so rigidly as to make a casualty of the truth. It is clear from the record that Sandlin entered a guilty plea in 08-CR-343, as discussed above. Indeed, the judgment entry of conviction, filed May 28, 2008, in 08-CR-343 - which recites that Sandlin was convicted of third degree felony complicity to robbery and sentenced to four years imprisonment - also bears a journalization stamp dated May 29, 2008.

{¶ 8} In our judgment, the State correctly asserts that the misnumbering of the document containing the "plea of guilty" and "judgment entry of guilty" was nothing more than a clerical mistake arising from oversight or omission which the trial court can correct. See Crim.R. 36. We will remand the case for the correction of this document and for filing and journalization of the corrected document in 08-CR-343.

{¶ 9} The first assignment is overruled.

{¶ 10} "2) DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL WHICH CAUSED HIS GUILTY PLEA TO BE LESS THEN KNOWING AND VOLUNTARY.

{¶ 11} Sandlin complains that his plea of guilty was less than knowing and voluntary because his trial counsel pressured him to plead guilty and because counsel was unprepared for trial.

{¶ 12} The record supports neither of these contentions.

{¶ 13} Sandlin contends without record support that his counsel told him "that he would very likely get only one year of jail time if he entered a plea." The disposition transcript passage that Sandlin points to in support of this assertion fails to do so.

{¶ 14} "THE COURT: Why did you plead guilty to complicity of robbery if you had no knowledge that the juveniles were going to rob the clerk?

{¶ 15} "THE DEFENDANT: Because I was told that no matter if I went to trial or not, to try to beat it, that I'd probably get more time anyway.

{¶ 16} "MR. MARSHALL: I'm not sure what that means, Judge. I never told Mr. Sandlin that he should or should not go to trial. We went over the facts of this case, and I left the decision up to him.

{¶ 17} "THE DEFENDANT: Right."

{¶ 18} Furthermore, when Sandlin entered his plea, he stated that no promises had been made to induce his plea other than the reduction from a second degree felony to a third degree felony and a pre-sentence investigation. He said he had not been threatened and that he was pleading voluntarily. Sandlin also said that the medication he was taking did not affect his understanding.

{¶ 19} "THE COURT: Are you under the influence of any drugs, alcohol, or medication this afternoon?

{¶ 20} "THE DEFENDANT: Just the stuff – they give me the Vivactil and stuff in the jail.

{¶ 21} "THE COURT: What's that for?

{¶ 22} "THE DEFENDANT: I guess it's like an anti-depressant.

{¶ 23} "THE COURT: Okay. Does that affect your ability to understand the nature of the proceedings?

{¶ 24} "THE DEFENDANT: No."

{¶ 25} At disposition, Sandlin had no complaints about his counsel. Although counsel told the court that the prosecutor at one time offered to recommend an 18 month sentence in return for a plea of guilty to a fourth degree felony, there is no record support for the contention that defense counsel told Sandlin that a one year sentence was likely if he pleaded guilty or for the contention that counsel otherwise pressured him to plead guilty.

{¶ 26} Turning to Sandlin's complaint that his counsel was unprepared for trial, he first points out that his counsel did not issue subpoenas. He identifies his mother and Cindy Burghy as two witnesses who "would be able to confirm his version of events," which appears to be that he was the unwitting chauffeur for the two juveniles who committed the robbery. The brief mention of these two witnesses at disposition does not persuade us that they would have been helpful to Sandlin. Assuming for the sake of argument that they would have been helpful, counsel would not have necessarily been remiss in not issuing subpoenas for their attendance as they might have appeared voluntarily if requested to do so.

{¶ 27} Sandlin also complains that his pre-plea contact with his counsel consisted of three 5-10 minute meetings, which mostly consisted of trial counsel's efforts to persuade Sandlin to plead guilty. The record does not support this complaint.

{¶ 28} Finally, Sandlin points to the fact his counsel only saw certain prosecution evidence for the first time on the eve of trial and had not examined certain evidence as of the eve of trial. The record demonstrates that at 9:48 A.M. or shortly thereafter on April 29, 2008,

defense counsel was provided for the first time with certain evidence by the prosecutor and had yet to review other evidence he had received. At that time, Sandlin refused to waive "his 24 hour service requirement" on the new indictment because he wanted his counsel to see all of the evidence before proceeding to trial. The trial court continued the matter for trial to the following day. At 2:30 in the afternoon of April 29, the trial court reconvened to allow Sandlin to plead guilty. In the approximately 4 ½ hours between 9:48 A.M. and 2:30 P.M., defense counsel would have had ample time to review all of the evidence that was referred to on the morning of April 29 and to confer with Sandlin as to its significance. On the basis of this record we cannot conclude that defense counsel was not fully apprised of the State's case when Sandlin pleaded guilty to the reduced charge during the afternoon of April 29 or that he would have been unprepared for trial April 30.

{¶ 29} The second assignment is overruled.

{¶ 30} "3) THE TRIAL COURT ABUSED ITS DISCRETION IN SENTENCING APPELLANT TO FOUR YEARS OF INCARCERATION.

{¶ 31} The only issue raised by this assignment is whether the less than maximum 4 year sentence was an abuse of discretion. See *State v. Kalish* 120 Ohio St.3d 23; 2008-Ohio-4912.

{¶ 32} The trial court recited in its judgment entry of conviction that it had considered the pre-sentence investigation report and R.C. 2929.11, and had balanced the R.C. 2929.12 seriousness and recidivism factors.

{¶ 33} We have not been favored with the pre-sentence investigation report. It would

appear from what we can glean from the record we do have that there are no "more serious" or "less serious" factors. One of the juveniles assaulted the clerk of the drive-through where the robbery occurred but she was not injured.

{¶ 34} Turning to the recidivism factors, according to defense counsel Sandlin had a "pretty significant traffic record," a domestic violence conviction in 1993, and a fourth degree drug paraphernalia conviction in 2007. So Sandlin does fit "likely to commit future crimes" factor R.C. 2929.12(D)(2) and does not fit "unlikely" factors 2929.12(E)(2)(3).

{¶ 35} The trial court was highly skeptical of Sandlin's contention that he had been duped into becoming an unsuspecting accomplice by the two juvenile robbers he drove to the drive-through. Sandlin was forty years old at the time of the robbery. The trial court properly considered this as another "likely" factor. See R.C. 2929.12(D).

{¶ 36} On this record, we find no abuse of discretion.

{¶ 37} The third assignment is overruled.

{¶ 38} The judgment will be affirmed. The case will be remanded for further proceedings as discussed in our disposition of the first assignment of error.

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DONOVAN, P.J. and BROGAN, J., concur.

(Hon. William H. Wolff, Jr., retired from the Second District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

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