[Cite as *State v. McCallister,* 2010-Ohio-1239.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
GREENE COUNTY

STATE OF OHIO	:	
	:	Appellate Case No. 09-CA-29
Plaintiff-Appellee	:	
	:	Trial Court Case No. 05-CR-600
v.	:	
	:	
RONNIE McCALLISTER	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

. . . . . .

O P I N I O N

Rendered on the 26th day of March, 2010.

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BROGAN, J.

{¶ 1} Ronnie McCallister appeals from his conviction in the Greene County Common Pleas Court of five counts of forgery, one count of the misuse of a credit card and theft of property valued between $500 and $5,000.

{¶ 2} Two months after he was indicted, McCallister entered guilty pleas to all the charges mentioned above. At the time of the plea, McCallister's counsel pointed

out that Counts I and II contained incorrect dates and he suggested the dates should read July 10, 2005 and July 17, 2005 rather than June 15, 2005 and June 17, 2005. McCallister indicated he was satisfied with the suggested amendment.

{¶ 3} McCallister was sentenced to serve ten months in Counts I, II, III, IV and V, to be served concurrently with each other, but consecutive to a sentence of ten months imposed in Count VI, and consecutive to a term imposed on Count VII, for a total term of 30 months incarceration. He was placed on an own recognizance bond, and it was agreed that if he failed to report to the Greene County Sheriff's Office on October 14, 2005, the sentence would be increased to 42 months. McCallister failed to report to the Greene County Sheriff's Office as required.

{¶ 4} The trial court sustained a motion made by the State to issue a bench warrant for the defendant's arrest on October 28, 2005. The warrant was not served upon the defendant until January 30, 2009. On March 24, 2009, McCallister filed a motion to withdraw the guilty plea that had been entered more than three years prior. This motion was overruled after a hearing was conducted. The defendant's sentence was vacated and the trial court imposed the 42-month term of incarceration upon him, just as he had been informed would happen more than three years prior if he failed to report.

{¶ 5} In his first assignment of error, McCallister contends his guilty pleas were not entered voluntarily, knowingly, or intelligently. Specifically, he argues that the original indictment included dates in June 2005 when he could not have committed the offenses listed in Counts I and II of the indictment. The State, for its part, notes that appellant agreed to the amendment to dates in July 2005.

{¶ 6} We note at the plea hearing, the prosecutor represented that all the charges in the indictment involved the defendant's paying for cab rides with stolen credit card numbers. The defendant informed the court that he needed "to make one correction here." (Tr. 12.) After conferring with his counsel, his lawyer pointed out to the prosecutor that the receipts from the cab company submitted to him in discovery indicated the dates for the first counts in the indictment needed to be amended. On the dates listed in Counts I and II, McCallister was in custody in Clark County. (Tr. 13.) McCallister indicated he was satisfied with the amended dates for the indictment. (Tr. 13.)

{¶ 7} McCallister testified he entered guilty pleas on the advice of his lawyer that he would get the maximum sentence if he went to trial. He denied committing the offenses to which he entered guilty pleas.

{¶ 8} We have reviewed the defendant's pleas and the subsequent motion hearing, and we agree with the trial court that McCallister did not establish that his plea was not entered voluntarily, knowingly, or intelligently.

{¶ 9} Crim.R. 11(C)(2) describes the procedure a trial court must use when accepting a guilty plea in a felony case. It requires that the trial court engage in a colloquy with the defendant to do all of the following:

{¶ 10} "(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.

{¶ 11} "(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." Id.

{¶ 12} The trial judge engaged in an extensive colloquy with McCallister in full compliance with the requirements of Crim.R. 11. There is no evidence that McCallister was pressured into entering his guilty pleas. He fully agreed with the amendments to Counts I and II, which did not change the nature or culpability of those offenses. The appellant's first assignment is Overruled.

{¶ 13} In his second assignment, McCallister contends he was denied the right to the effective assistance of counsel guaranteed him by the United States Constitution. McCallister contends his counsel was constitutionally ineffective when he failed to move to dismiss the two counts of the indictment which included incorrect dates for the former offense.

{¶ 14} The State, for its part, argues that McCallister's counsel provided effective representation in securing a negotiated plea for a sentence of thirty months despite the defendant's exposure to a seven-year sentence. The State argues that McCallister's counsel may have believed it was better to accept the negotiated plea than move to dismiss two counts of the indictment. In any event, Crim.R. 7(D) permits an amendment to the indictment if the name or identity of the crime is not changed. *State v. Mundy* (1994), 99 Ohio App.3d 275, 313. The appellant has failed to demonstrate to us that his counsel did not provide competent and effective representation. His second assignment of error is also Overruled.

{¶ 15} The judgment of the trial court is Affirmed.

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DONOVAN, P.J., and FROELICH, J., concur.

Copies mailed to:

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