

[Cite as *State v. McComb*, 2010-Ohio-4043.]

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

STATE OF OHIO :
 :
Plaintiff-Appellee : C.A. CASE NOS. 23604, 23605,
 : 23606, 23607, 23608
 :
vs. : T.C. CASE NOS. 08TRD17322,
 : 08TRD25938, 09TRD03232,
 : 09TRD3874, 09TRD3927
 :
RODNEY McCOMB : (Criminal Appeal from
 : Municipal Court)
Defendant-Appellant :

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O P I N I O N

Rendered on the 27th day of August, 2010.

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GRADY, J.:

{¶} On July 31, 2009, Rodney McComb entered guilty pleas
in five cases to one count of driving without an operator's license,
R.C. 4510.12(A)(1), a misdemeanor of the first degree. Companion

charges in each case were dismissed by the State. The trial court did not address McComb during sentencing to ask him if he wished to say anything before sentence was imposed. The trial court sentenced McComb to concurrent terms totaling one hundred and eighty days in jail, with ninety days being suspended, and the court placed McComb on electronic home detention in lieu of jail for the duration of his sentence, commencing after McComb has served thirty days in jail. Fines and court costs were also imposed upon McComb.

{¶2} After the court imposed its sentence, defense counsel spoke on behalf of McComb and requested leniency due to McComb's employment and financial hardships. McComb also spoke about his financial hardship. The court indicated that it had already taken these factors into consideration, and its sentence remained unchanged.

{¶3} McComb timely appealed to this court from his conviction and sentence. He challenges only his sentence, and specifically the denial of his right of allocution.

ASSIGNMENT OF ERROR

{¶4} "THE TRIAL COURT ERRED WHEN IT FAILED TO AFFORD THE APPELLANT THE OPPORTUNITY TO SPEAK PRIOR TO SENTENCING, PURSUANT TO RULE 32(A)(1) OF THE OHIO RULES OF CRIMINAL PROCEDURE."

{¶5} Crim.R. 32(A)(1), which preserves a defendant's right

of allocution, states, in part:

{¶ 6} "At the time of imposing sentence, the court shall:

{¶ 7} "(1) Afford counsel an opportunity to speak on behalf of the defendant and 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."

{¶ 8} We have held that Crim.R. 32(A)(1) imposes an affirmative duty on the trial court to address the defendant on the record prior to imposing a sentence and inquire whether he or she wishes to speak. *State v. Sexton*, Greene App. No. 04CA14, 2005-Ohio-449, citing *State v. Campbell*, 90 Ohio St.3d 320, 2000-Ohio-183. If a trial court imposes its sentence without first asking the defendant whether he or she wishes to exercise his right of allocution, resentencing is required unless the error was invited or is harmless. *Campbell*.

{¶ 9} The trial court did not address McComb personally and inquire whether he wished to speak on his own behalf prior to imposing his sentence. The State concedes that this was error, and that the error was not harmless because McComb did not have an alternative opportunity to address the court on the issue of mitigation prior to the imposition of sentence. We agree. *Sexton; Campbell; State v. Green*, 90 Ohio St.3d 352, 2000-Ohio-182.

{¶ 10} McComb's sole assignment of error is sustained. The

trial court's sentence will be reversed and the matter remanded to the trial court for resentencing. Otherwise, the judgment of the trial court is affirmed.

DONOVAN, P.J. And FROELICH, J., concur.

Copies mailed to:

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Hon. James D. Ruppert